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Proliferation of Money Laundering: Law and Practice in Bangladesh

By

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Dissertation

submitted to the Department of Law, University of Rajshahi, Rajshahi,
Bangladesh in fulfillment of the requirements for the degree of

Doctor of Philosophy



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July 2015

Proliferation of Money Laundering: Law and Practice in Bangladesh

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*For
my parents*

Declaration

I declare that this dissertation entitled **Proliferation of Money Laundering: Law and Practice in Bangladesh** prepared for submission to the Department of Law, University of Rajshahi, for the Degree of Doctor of Philosophy in Law, is completely a personal work of mine. No part of this dissertation in any form has been submitted to any other University or Institute for the award of any degree or diploma.

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Certificate

This is to certify that the dissertation entitled **Proliferation of Money Laundering: Law and Practice in Bangladesh** is an original work done by **Md. Rafiqul Islam** in the Department of Law, University of Rajshahi, for the degree of **Doctor of Philosophy** in Law under our supervision.

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List of Acronyms and Abbreviations

ACC	Anti-Corruption Commission
ADB	Asian Development Bank
AML	Anti-Money Laundering
AMLDD	Anti-Money Laundering Department
AMLU	Anti-Money Laundering Unit
APGML	Asia Pacific Group on Money Laundering
APRRG	Asia Pacific Regional Review Group
ATA	Anti -Terrorism Act
ATO	Anti-Terrorism Ordinance
BAMLCO	Branch Anti-Money Laundering Compliance Officer
BB	Bangladesh Bank
BCBS	Basel Committee on Banking Supervision
BCS	Bangladesh Civil Service
BDT	Bangladesh Taka
BFIU	Bangladesh Financial Intelligence Unit
BGB	Border Guard of Bangladesh
BMPE	Black Market Peso Exchange
BO	Beneficial Owner
BP	Bangladesh Police
BSA	Bank Secrecy Act
CAG	Comptroller and Auditor General

CAMLCO	Chief Anti-Money Laundering Compliance Officer
CCU	Central Compliance Unit
CDD	Customer Due Diligence
C&F	Clearing and Forwarding Agents
CFATF	Caribbean Financial Action Task Force
CFT	Counter Financing and Terrorism
CID	Criminal Investigation Department
CMI	Capital Market Intermediaries
CPTU	Central Procurement Technical Unit
CSE	Chittagong Stock Exchange
CTC	Counter Terrorism Committee
CTR	Currency Transaction Report
CTRs	Cash Transaction Reports
DoC	Department of Cooperatives
DoS	Department of State
DSE	Dhaka Stock Exchange
EAG	Eurasian Group
EBRD	European Bank for Reconstruction and Development
EC	Election Commission
ECB	European Central Bank
EDD	Enhanced Due Diligence
EG	Egmont Group
EGFIU	Egmont Group of Financial Intelligence Units
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group

FATF	Financial Action Task Force
FERA	Foreign Exchange Regulation Act
FI	Financial Institution
FinCEN	Financial Crimes Enforcement Network
FI U	Financial Intelligence Unit
GDP	Gross Domestic Product
GIFCS	Group of International Finance Centre Supervisors
GoB	Government of Bangladesh
GPML	Global Programme against Money Laundering
IAIS	International Association of Insurance Supervisors
ICAB	Institute of Chartered Accountant of Bangladesh
ICRG	International Cooperation Review Group
IDB	Inter-American Development Bank
IFIs	International Financial Institutions
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
IPO	Initial Public Offer
IRD	Internal Resources Division
JMB	Jamaat ul-Mujahideen Bangladesh
KYC	Know Your Customer
KYE	Know Your Employee
MCs	Money Changers
MER	Mutual Evaluation Report
MIS	Management Information System

ML	Money Laundering
MLCA	Money Laundering Control Act
MLM	Multi Level Marketing
MLPA	Money Laundering Prevention Act
MLPO	Money Laundering Prevention Ordinance
MoF	Ministry of Finance
MoUs	Memoranda of Understanding
NBR	National Board of Revenue
NCC	National Coordination Committee
NCCT	Non-Cooperative Countries and Territories
NGOs	Non Governmental Organizations
OECD	Organisation for Economic Co-operation and Development
OOCL	Orient Overseas Container Line
PEPs	Politically Exposed Persons
POCA	Proceeds of Crime Act
SAARC	South Asian Association for Regional Cooperation
SAR	Suspicious Activity Report
SEC	Stock Exchange Commission
STRs	Suspicious Transaction Reports
SOPs	Standard Operating Procedures
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TC	Travelers' Cheque
TF	Terrorist Financing

TIB	Transparency International Bangladesh
TP	Transaction Profile
UK	United Kingdom
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolution
USA	United States of America
USD	United States Dollar
WCO	World Customs Organization

Abstract

Money Laundering (ML) is an issue much-discussed all over the world including Bangladesh. States and number of transnational organisations are concerned about the issue and have taken various steps in preventing ML and controlling activities associated with it at both national and international levels. The government of Bangladesh has also acted on many forums to prevent ML. However, no significant result is evident in this regard. The aim of the study is to explore the concept of ML, determine the existing laws concerning Anti Money Laundering (AML), and also examine the role of the government of Bangladesh in preventing ML.

The study has been conducted on an elaborate pattern of 06 (six) chapters with sections and sub-sections. The introductory chapter includes the statement of the problem, literature review, methodological aspect and objectives of the study, along with its necessity, scope and limitations. The following chapter discusses the conceptual issues covering the definition, historical background, and analyses the classification, stages, and different modes including some relevant case studies on ML. Chapter Three explains the term ‘proliferation of money laundering’ and also examines its nature, causes and consequences. At the same time, the chapter also focuses on the sectors through which ML occurs in Bangladesh. The next chapter briefly describes the relevant provisions of domestic AML laws and transnational initiatives to prevent ML and also examines the drawbacks of existing AML laws of

Bangladesh. The implementation of AML laws, administrative rules and guidelines are discussed in the penultimate chapter which focuses on the role of governmental institutions engaged in implementing the provisions of AML laws with a view to preventing ML in Bangladesh. The chapter examines both of their operational and functional frameworks at national and international levels, and also analyses the obstacles and challenges faced by the concerned authority or institutions engaged in preventing ML in Bangladesh.

The concluding chapter puts forward some suggestions on the basis of the summaries of findings and identifies specific challenges addressed in the thesis. In addition to these, the chapter summarises the main arguments used in the thesis and suggests a few ways of preventing ML by amending existing AML laws; cumulatively, critically synthesises all of the above mentioned issues and constitutes the outcome of the study.

Chapter One

Introduction

1.1 Introduction

Money Laundering (ML) is a serious concern in every country whatsoever the nature of the country is, large or small, rich or poor.¹ It affects economic situation, social culture, political integrity and the national stability of a country. ML may provide advantages to drug dealers, smugglers, terrorists along with corrupt public servants and other criminals.² ML impacts on established institutions in financial-sector and hinders economic growth. Subsequently, it slows down the economic growth of a country by reducing productivity in the industrial sectors through diverting resources. Activities connected to ML also distort the external economic sector, international trade and capital flows, in turn long-term economic development.³ These negative consequences of ML have awakened the governments to be more concerned and they have introduced Anti-Money Laundering (AML) laws and policies, although those initiatives do not always seem sufficient in limiting ML activities and related crimes at the optimum level.

The subversive nature of practices has made it difficult to define and characterize the term ‘money laundering’ in absence of universal single

¹ Bowden Stephen, *Money Laundering: Key Issues and Possible Action* (Commonwealth Secretariat, UK, January 1997). p. 1.

² Davi M. D'Agostino, *Money Laundering: Extent of Money Laundering Through Credit Cards Is Unknown* (Diance Publishing Co. Alibris, UK, December 2002). p. 6.

³ Anti Money Laundering Section, Janata Bank Limited, “Anti Money Laundering Policy.” Dhaka, Bangladesh (October 2011). pp. 9-10.

definition. However, the concept is generally understandable by explaining its sources: dirty and clean. Dirty money refers to the money earned from illegal sources and the launderers transform the earnings into funds with seemingly legal sources. Clean money, for the purpose of the study, is money earned through legal sources. This clean money becomes controversial when someone launders or misappropriates it for the purpose of illegal activities.

Generally, ML means the movement of illicit funds for the purpose of concealing the original sources of that fund. ML is, in fact, a multi-faceted process of disguising, transferring, retaining, remitting or investing of unlawfully derived money (from moveable or immovable property) in domestic or international level by concealing the origin.⁴ It can be as simple as cash deposit and withdrawal from a bank account. At the same time, it is also as complex as international off-shore banking,⁵ using internet, wire transfers, shell corporations,⁶ or bulk cash smuggling and monetary instruments, informal personal networks, and so on.

ML has grown into an alarming stage in Bangladesh because of rising crimes like smuggling, drug dealing and corruption. This alarming growth and their links with other crimes, including illegal trade (in narcotics) have made it a major global problem. It is practiced through engagement in financial

⁴ M.S. Siddiqui, "Need for Reviewing Anti-money Laundering Law to Serve Its Real Purpose." *The Financial Express*, Dhaka (27 July 2009).

⁵ An offshore bank is a bank located outside the country of residence of the depositor, provides financial and legal advantages. These advantages typically include: greater privacy, low or no taxation (i.e. tax havens) easy access to deposits (at least in terms of regulation), protection against local, political, or financial instability.

⁶ Shell corporations are those corporations that primarily exist only as named legal entities, without any trading and business activities.

transactions by concealing identity, source, purpose and final stage of laundered money.⁷ The condition purports the use of illegal money legally, averting connecting with criminal activities and avoiding the eyes of law enforcement authority. ML is virtually in existence with every country especially in present situation when more flexible global financial market has opened up. As such, a single scheme usually involves the transfer of money through several countries so as to obscure its origins.

In detecting ML and limiting it, governments enact legislations as well as execute those. Nonetheless, individual nation has no power to stop ML despite having number of legislations, policies and regulations since many of launderings happen by connecting more than one country. Thus, the issue gets international character.

1.2 Statement of the Problem

ML is widely spread in different countries including Bangladesh. The cross-border money flows, tax evasion, corruptions, terrorism, smuggling,⁸ trafficking (of men, women, child, and narcotics or drugs etc.), illegal trade and so on are related with the proliferation of money laundering in Bangladesh. The ML activities and related crimes are seen in national and international levels. It is deemed as a finance-based crime that buckles down to conceal, misrepresent

⁷ Mahalingam Sudha, "Economic Offences: Dealing with Dirty Money." *Frontline* (national magazine of Indian), *The Hindu*, Vol. 15, No. 07 (4 – 17 April 1998).

⁸ Smuggling of money or property means-(i) transfer or holding money or property outside the country in breach of the existing laws in the country; or (ii) refrain from repatriating money or property from abroad in which Bangladesh has an interest and was due to be repatriated; or (iii) not bringing into the country the actual dues from a foreign country, or paying to a foreign country in excess of the actual dues. *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-2 (a).

and to disguise all the details with regard to illegal income. However, ML activities are also extending beyond regulated market with increased money flows outside conventional banking by transferring currency from outside state territory. ML appears as a malpractice of money transaction which is regulated outside a legal framework.⁹

ML activities and related crimes are committed frequently and also increasing day by day through the financial, non financial and other sectors in Bangladesh. This raises a question about the awareness of concerned persons or organs from the view point of their supervision, efficiency, reputation or implementing mechanism in preventing ML activities. The efforts of banking sector on the prevention of ML activities cannot be achieved to a satisfactory level without introducing proper regulations; while, the government plays the key role.

There are specific ways of ML of which the most common are black market peso exchange, structuring deposits, offshore banking, underground or alternative transactions, shell company etc.¹⁰ Overall context of counter terrorism, ML activities and related crimes must be kept in purview with equal importance. In this regard, enacting appropriate AML laws (side-by-side) and its proper execution are important to build up capacity in order to identify ML activities and related crimes. Money collected for charitable purposes and often

⁹ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 1.

¹⁰ Sudha, *op.cit.*

distributed to terrorist groups, thereby both enhancing the capability of disadvantaged people and boosting specific terrorist groups. Boosting up of terrorist groups disrupts the general functions of government's administration in Bangladesh.¹¹

The development of information technology has increased the possibility of moving money fast along with maintaining confidentiality. The government of Bangladesh has not prepared enough paperwork to protect ML on the strain of Foreign Exchange (FX) reserve and understaffing of FX although there are different agencies involved in this area. Joint oversight activities may complicate things even further. Notwithstanding such interpretation, based largely on perception, it was prudent to make this explicit in 1988 under the United Nations Convention Against Illicit Traffic in Narcotics, Drugs and Psychotropic Substances. Otherwise, Bangladeshi legislation will turn out ineffective in dealing with ML activities connected with offshore transactions. According to the United Nations Convention Against Transnational Organized Crime (The Palermo Convention 2000), the scope of ML activities and related crimes has been elaborated.¹²

Several countries follow strong bank-secrecy laws so that a bank cannot provide with information about any details of its account holder to others. The process facilitates the anonymous depositing of dirty money¹³ followed by

¹¹ Hearn Michael, "Terror Financing Loopholes in Existing Laws Need to be Plugged." *The Daily Star*, Dhaka (25 September 2010).

¹² *The United Nations Convention Against Transnational Organized Crime (2000)*. Art 6.

¹³ Dirty money is money that is illegally earned, illegally transferred or illegally utilized. The money qualifies as dirty money through breaking laws in its origin, movement or use.

transferring to another country. The government of Bangladesh fails to fully control ML, despite it has introduced AML laws.¹⁴ According to the Bangladesh Economic Association (BEA), roughly \$6bn has been transferred outside proper channels in the year 2002-2003, more than half of which was moved through smuggling. More than 20% of the laundered money is transferred as undocumented remittances from outside the country, while the bribery covers about 7% of the total amount. The survey also revealed that informal money transfer, or *hundi*,¹⁵ responsible for the bulk of the funds Bangladeshis transfer every year to other countries for education, leisure trip, medical treatment etc. involved \$5.9 bn for the fiscal year 2002-2003.¹⁶

1.2.1 Money Laundering

In fact, there is no unique definition of ML. However, ML refers to handling money via unlawful processes with a view to disguising or concealing their sources of earning. The process of ML may appear in complex ways; it is also difficult to clearly determine activities connecting to ML. It may be seen as self-preserving and at the same time self-generating process having no exact time of beginning and ending. The activities related to ML may be realized in many ways. Many times, the persons involved use innovative techniques in committing ML. However, there are some typical ways and techniques which they have been using for a long period such as placement, layering and integration.¹⁷

¹⁴ Ahmed Ali, "Anti-money Laundering Measures Still Ineffective." *The Daily Star*, Dhaka (29 May 2004).

¹⁵ Hundi is an alternative remittance system that is popular among not only immigrant workers, but also all strata of Bangladesh society.

¹⁶ This figure was presented at a seminar by Professor Dr. Abul Barakat, Department of Economics, Dhaka University and the general secretary of the Bangladesh Economic Association (BEA). Cited in M S Siddiqui, "Need for Reviewing Anti-money Laundering Law to Serve Its Real Purpose." *The Financial Express*, Dhaka (27 July 2009).

¹⁷ Details in the following chapter 2.4.1.

ML activities became much complicated when the enterprises use non existing products or services for tax evasion. It affects national economic strength, open market economy, and the rule of law. Moreover, it threatens to the efficiency and stability of overall financial system. Subsequently, AML legislations have extended jurisdiction not only over banks and financial intermediaries, but also to personal level i.e. professionals and agents,¹⁸ the AML provisions of laws are diversified through a set of international and domestic sources.

1.2.2 Proliferation of Money Laundering

Proliferation of money laundering is inflation of ML which cannot be understandable without explaining in depth the concept of ‘money laundering.’ The researchers have been searching for a concrete meaning of proliferation of money laundering. The proliferation is either expansion or effects or consequences of its origin–money laundering. Money launderers try to create a false impression that the funds in their possession are generated from legitimate sources.¹⁹ Sometimes they mislead law enforcing authorities so that the authorities fail to trace the actual sources of the money. Thus, they escape punishment despite their misdeeds relating to financial transactions.

ML affects society where it flourishes since the relationships between crimes connected to financial transactions and ML are quite close. There is likely

¹⁸ The professionals are the lawyer, notary, other legal professional and accountant, and the dealer in precious metals or stones, real-estate developer or its officers or employees or agents and so on.

¹⁹ Peter J. Kacarba, “An In depth Analysis of the New Money Laundering Statute.” *Akron Tax Journal*, Vol. 8, No. 2 (United States, 1991).

to be an increase of unlawful economic transaction parallel to spreading of ML. Hence, the general view is that ML operates to boost up illegal activities in the field of financial sectors along with other different criminal activities.

1.2.3 Proliferation of Money Laundering in Bangladesh

Geographical location is an important factor to determine the social culture, political integrity, scope of ML and the preventing measures of ML of a country. ML activities depend upon relation and communication between the launderers and a country. It is necessary to know the strategic geographical location of a country in order to achieve real knowledge about ML. Bangladesh is a developing country, located in South Asia, having borders with India on the west, north and north east, Myanmar on the east and Bay of Bengal on the south.

The economy of Bangladesh has developed in many fronts; among them cash-based is important one. Most trade in Bangladesh is operated through physical transactions of money other than online or card purchase.²⁰ Generally, in the age of globalisation, people transfer money abroad using the banking channel and by bulk cash smuggling.²¹ However, a large portion is often transferred through *hundi* networks or other informal money transferring systems. *Hundi* transaction costs lesser than a formal process and the system is based on trust. An effective policy with strong foreign exchange laws may

²⁰ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 5.

²¹ Bulk cash smuggling is the smuggling of cash physically from one place to another jurisdiction, which deposited in a financial institution, such as an offshore bank, with greater bank secrecy or less rigorous money laundering enforcement. Available at <<http://www.justice.gov/dea/pubs/pressrel/011106.pdf>> Accessed on 15 March 2014.

prevent criminals from committing ML activities. The government of Bangladesh has been trying to limit ML activities and related crimes. The lack of awareness of mass people and shortcomings of the law enforcing agencies are observed as the main obstacles to prevent proliferation of money laundering in Bangladesh.

1.2.4 Governmental Initiatives in Bangladesh to Limit Proliferation of Money Laundering

A controlling body is required to govern the financial sector of a country. The government of Bangladesh established Bangladesh Bank (BB)²² in 1971 as the Central Bank of Bangladesh for controlling and supervising financial institutions. The BB has been issuing number of guidelines²³ in favour of banks (both government and private), financial institutions, insurance companies etc. since the beginning. These guidelines include direction to deal with transferring money, prevent ML and TF activities. However, it took long time for Bangladesh government to enact AML laws. At first, the government of Bangladesh enacted the Anti Money Laundering Act 2002 to prevent ML activities. It was amended in 2005 to include predicate offences as ML. The Act was again amended in 2008 to include a provision of stock market

²² Bangladesh Bank is responsible for the banking supervision in Bangladesh. The Bank's affairs and business is controlled by a Board of Directors, made up of nine members, including the Governor, Deputy Governor, three government officials and four persons with advanced banking, commerce and finance experience. The core legal framework for banking supervision in Bangladesh is laid down in article 7A (f), the Bangladesh Bank Order, 1972 (President Order No.20, 1972) and in section 44 of the Bank Company Act (BCA), 1991 (Act No. XIV of 1991). The Bank and Financial Institutions Division of Ministry of Finance exercises control over the State Controlled Banks through appointment/ nomination of the Board of Directors, although they are under the supervisory purview of Bangladesh Bank. Bangladesh Bank supervises all the commercial banks as per instructions given in the Bank Company Act 1991 in conjunction with the Bangladesh Bank Order 1972.

²³ For instance, "Guidance Notes on Prevention of Money Laundering and Terrorist Financing", Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), Dhaka (16 September 2012) "Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market Intermediaries", BFIU, BB, Dhaka (2013) and "Guidelines on Prevention of Money Laundering and Combating Financing of Terrorism for Designated Non Financial Business and Profession", BFIU, BB, Dhaka (2013).

manipulation, which was passed by the parliament in February 2009. At the same time, the Anti Terrorism Act 2009 was also enacted. Further repealing the Money Laundering Prevention Act 2009, the Money Laundering Prevention Act 2012 was enacted to introduce a provision to make admissible foreign documents in court and to back siphon off money from abroad. Similarly, the Anti Terrorism Act 2009 was also amended in 2012 and 2013 to meet international standards and to establish an effective regime in Bangladesh to deal with Terrorist Financing (TF).

In 2007, BB formed its Financial Intelligent Unit (FIU) for receiving, analyzing and disseminating Suspicious Transaction Reports (STRs) and Cash Transaction Reports (CTRs) related to ML and TF. The FIU was tasked to take care of Anti Money Laundering Division (AMLDD) of the BB. At the present, the FIU works as a separate unit of the BB renamed in 2012 as Bangladesh Financial Intelligence Unit (BFIU).²⁴

The government of Bangladesh established Anti Corruption Commission (ACC) under the Anti Corruption Commission Act 2004. Initially the ACC could not function well due to its limited power; however, it got more power after the government had amended the Anti Corruption Commission Act in 2007 in the light of United Nations Convention against Corruption, which was adopted by General Assembly on 31 October 2003. The ACC is entitled to freeze the property acquired by ML activities.

²⁴ Details in chapter 4.2.1.2. The Financial Intelligence Unit (FIU) was established in Bangladesh Bank (BB) for receiving, analyzing and disseminating Suspicious Transaction Reports (STRs) and Cash Transaction Reports (CTRs) related to Money Laundering (ML) and Terrorist Financing (TF) on 16 May 2007. The Anti Money Laundering Division (AMLDD) is now working as a separate unit in Bangladesh Bank (BB) as Bangladesh Financial Intelligence Unit (BFIU). *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec- 24.

The government has also ratified a number of international treaties such as the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention 1988)²⁵ and the United Nations Convention Against Transnational Organized Crime (the Palermo Convention 2000) for preventing and controlling ML activities. Bangladesh is a member of Asia Pacific Group on Money Laundering (APG or APGML) from its inception which was formed to ensure the adoption, implementation and enforcement of the recommendations of the Financial Action Task Force (FATF).²⁶ This aims to achieve international AML standards. In addition, the government of Bangladesh has reframed its existing Voluntary Tax Compliance (VTC) Programme by issuing a new Statutory Regulation Order (SRO) by National Board of Revenue (NBR), which rescinded the previous VTC Programme to address the FATF concerns expressed in the public statement in the NBR Chairman's summary following the October 2011 plenary meeting.²⁷

²⁵ The Convention was adopted by the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, held at Vienna from 25 November to 20 December, 1988. The Conference was convened pursuant to resolution 1988/8 of 25 May, 1988 of the Economic and Social Council acting on the basis of the General Assembly resolutions 39/141 of 14 December, 1984 and 42/111 of 7 December, 1987. The Convention was open for signature at the United Nations Office at Vienna, from 20 December, 1988 to 28 February, 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December, 1989. The Convention entered into force on 11 November, 1990, in accordance with Article 29(1) of the Convention. In addition to the Convention, the Conference adopted the Final Act and certain resolutions which are annexed to the Final Act. The text of the Final Act was published in document E/CONF.82/14. Available at <<http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsgno=V>> Accessed on 12 October 2013.

²⁶ Details in the following chapters 4.3. The FATF is an inter-governmental body founded by G7 countries (Canada, France, Germany, Italy, Japan and United Kingdom) created in 1989, whose purposes is the development and promotion of national and international policies to combat money laundering and terrorist financing. These are currently 34 members of the FATF; 32 jurisdictions and two regional organizations (the Gulf cooperation's Council and European Commission). These 34 Members are at the core of global efforts to combat money laundering and terrorist financing. These are also 27 international and regional organizations which are Associate Members or observers of the FATF are participate in its work. Available at <http://www.fatf-gafi.org/document/5/0,3343,en_3223686934310917_1_1_1_1,00.html> Accessed on 27 January 2014.

²⁷ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance Notes on Prevention of Money Laundering and Terrorist Financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 14.

1.3 Review of Literature

There are a good number of books, reports and articles published in the field of money laundering. Except for one book and one article on money laundering and terrorist financing in Bangladesh, none of the books or articles covers and relate to money laundering and existing anti money laundering laws in Bangladesh. A brief description of some related works on money laundering of different countries are given below:

Paolo Bernasconi has stated in his book entitled *Money Laundering and Banking Secrecy*²⁸ that ML and banking secrecy had become a threat to entire integrity of financial system. The book evaluates International trend of ML as a serious threat to the stability of democracy and the rule of law. In order to combat ML efficiently, it is clear that criminal law was not sufficient and that it was necessary for banks and other financial institutions to co-operate with law enforcement agencies of a country. The banking community is now obliged to report suspicious transactions, which they often regard as going beyond their role as bankers. The issue of bank secrecy has played an important role in the discussion between law enforcement agencies and banking community. The Council of Europe Convention on Laundering Search, Seizure and Confiscation of the Proceeds from Crime and the UN Drugs Convention require that bank secrecy cannot be an obstacle to international co-operation. At the national level the seizure of bank records should not be hindered by bank secrecy.

²⁸ Paolo Bernasconi, *Money Laundering and Banking Secrecy* (Kluwer Law International, Netherlands, 1995).

Danny R. Burton in his book entitled *Money Laundering: A Framework for Understanding U. S. Efforts Overseas*²⁹ has explained the United States and selected European countries' approaches to combating money laundering through regulation of financial institutions as well as United States participation in international agreements to combat ML.

Stephen Bowden in his book entitled *Money Laundering: Key Issues and Possible Action*³⁰ has discussed the serious threat posed by ML to all countries, large and small, rich and poor, and demonstrates the effect of ML not only on economic development but also on political integrity and stability of nations. The paper recommends measures to strengthen the financial sector, considers practical issues involved in combating money laundering in offshore financial centers in the parallel economy.

Temple has given a quick guide which looks at the scale of problems and efforts taken to overcome from the effect of money laundering in his book entitled *Essential Elements of the Prevention of Money Laundering: A study*.³¹ This study is an important reference for all who are concerned to identify ML within their organization. It is a quick guide on how to prevent an organization being used by money launderers.

In the book entitled *The Art and Science of Money Laundering*³² by Brett F. Woods shows and finds out how the world's best money launderers

²⁹ Danny R. Burton, *Money Laundering: A Framework for Understanding U. S. Efforts Overseas* (Diance Publishing Co. Alibris, UK, 1996).

³⁰ Bowden Stephen, *Money Laundering: Key Issues and Possible Action* (Commonwealth Secretariat, Marlborough House in London, UK, 1997).

³¹ Temple, P. *Essential Elements of the Prevention of Money Laundering: A Study* (Securities Institute Ltd., UK, 1998).

³² Brett F. Woods, *The Art and Science of Money Laundering* (Paladin Press, USA, May 1998).

evade sophisticated high-tech detection measures and move money freely in the electronic age. The book also provides the latest international law enforcement countermeasures for stopping illegal flow of money.

Danny R. Burton has discussed in his book entitled *Money Laundering: FinCEN Needs to Better Communicate Regulatory Priorities and Time Lines*³³ about the regulatory role of the Financial Crimes Enforcement Network (FinCEN), which is a bureau of the United States Department of the Treasury that collects and analyzes information about financial transactions to combat domestic and international money laundering, terrorist financing, and other financial crimes. In 1994, FinCEN's anti-money laundering role was expanded to include responsibility for promulgating regulations under the Bank Secrecy Act (BSA). In 1994 Treasury was directed to take certain actions regarding the use of money transmitting businesses by criminals involved in money laundering. The report assesses FinCEN's efforts to issue regulations pursuant to the BSA.

Another study in this area, *Dirty Money: The Evolution of Money Laundering Counter-measures*³⁴ by Gilmore, William C describes the laundering of criminal proceeds through abuse of internet banking and gambling; also potential for abuse presented by the development of smart cards and cyber wallets. To adapt to these advances in criminal activity, existing AML measures have been revised in different countries of the world. This

³³ Danny R. Burton, *Money Laundering: Fincen Needs to Better Communicate Regulatory Priorities and Time Lines* (Diance Publishing Co. Alibris UK, June 1998).

³⁴ Gilmore, William C. *Dirty Money: The Evolution of Money Laundering Counter-measures* (2nd ed.; Council of Europe Press, Strasbourg, France, 1999).

work describes various international measures, such as Project Octopus and work of individual countries, with specific updating of the situation in Caribbea, Latin America and Asia.

Guy Stessens provides a deep analysis of the legal issues raised by international fight against money laundering in his book entitled *Money Laundering: A New International Law Enforcement Model*.³⁵ It offers an extensive comparative research of criminal law and preventive law aspects from international perspective. Stessens shows ML as a new criminal trend threatening both national and international societies which must be addressed multilaterally through banking practice, international conventions and human rights. Most of this is devoted to specific legal problems that spring from international nature of ML phenomenon. It contains a detailed overview on rules and practices of international co-operation in preventing measures against ML. The publication gives a thorough examination of the exchange of information, lifting banking secrecy, and seizing and confiscating assets as well as the jurisdictional questions that inevitably arise in this context.

Peter Alldridge discusses in his book entitled *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime*³⁶ of the past twenty years action in respect of the profits of crime that has moved rapidly up the criminal justice agenda. This book

³⁵ Guy Stessens, *Money Laundering: A New International Law Enforcement Model* (Cambridge University Press: London, August 2000).

³⁶ Peter Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Hart Publishing, Oxford, UK, January 2003).

examines critically the history, theory and practice of all developments, culminating in the Proceeds of Crime Act 2002 in the UK; it marks another step in the move towards greater concentration on both the financial aspects of crime and internationalization of criminal law.

Davi M. D'Agostino has defined money laundering and discussed about the vulnerabilities of money laundering that may exist in credit card industry in his book entitled *Money Laundering: Extent of Money Laundering Through Credit Cards Is Unknown*.³⁷ The book explains the efforts by the industry to address potential vulnerabilities of money laundering using credit cards; and existing regulatory mechanisms to oversee the credit card industry and help to ensure the adequacy of required anti-money laundering programs.

The book *Money Laundering: Business Compliance*³⁸ by Stuart Bazley and Caroline Foster have explored the practical approach and hands on guidance to understand the Regulations and the Proceeds of Crime Act 2002 and the guidance notes in United Kingdom (UK) for Money Laundering Reporting Officers (MLROs), directors, compliance officers, risk officers, finance directors and accountants, company secretaries and all those within the regulated sector. Bazley and Foster bring experience and inside knowledge of the regulations and potential pitfalls in practice, and provide tips to help companies avoid liability for ML.

³⁷ Davi M. D'Agostino, *Money Laundering: Extent of Money Laundering Through Credit Cards Is Unknown* (Diance Publishing Co. Alibris, UK, 2003).

³⁸ Stuart Bazley, Caroline Foster, *Money Laundering: Business Compliance* (Elsevier, Amsterdam, Netherlands, July 2004).

Peter Reuter and Edwin M. Truman have carried out an important study on *Chasing Dirty Money: The Fight Against Money Laundering*³⁹ which deals with the scale and characteristics of ML. The book describes the current anti-money laundering regime, develop a framework for assessing the effectiveness of the regime, and use that framework to assess how well the current system works and make proposals for its improvement.

Paul Allan Schott has pointed out in his book entitled *Reference Guide to Anti-money Laundering and Combating the Financing of Terrorism*⁴⁰ a comprehensive source of practical information on how countries can fight against ML and TF activities. The book discusses the problem caused by ML. At the same time, the book explains the concept of new international initiative to prevent ML activities. The book also addresses the specific actions and the role of international organizations plays in preventing ML.

In the book entitled *Money Laundering: Experiences*,⁴¹ Charles Goredema explains the main reasons of ML—disclosure in relation to foreign tax evasion—definition of predicate offence and criminal conduct. This book also points out the reason for deeming conduct abroad to take place in UK and looks at well established principle that no country takes any notice of the revenue laws of another.

³⁹ Peter Reuter and Edwin M. Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (Peterson Institute Press, NW Washington DC, USA, November 2004).

⁴⁰ Paul Allan Schott, *Reference Guide to Anti-money Laundering and Combating the Financing of Terrorism* (World Bank Publications, United States, February 2006).

⁴¹ Goredema Charles, *Money Laundering: Experiences* (Institute for Security Studies, Pretoria, South Africa, 2006).

Wouter Muller, Christian Kalin and John Goldsworth have discussed in their book entitled *Anti-Money Laundering: International Law and Practice*⁴² about AML with definitive reference on ML and practice. There is also an overview to make a comparison between the most important topics of money laundering legislation and rules in different countries of Europe.

Mahfuzur Rahman focuses, in his book entitled *Money Laundering Protirodh*⁴³, the impact of ML on the economic development, and also describes the international initiatives in preventing ML activities and terrorist financing (TF). He also included the existing anti money laundering (AML) laws of Bangladesh and circulars issued by Bangladesh Bank in preventing ML activities in Bangladesh.

Another book entitled *Money Laundering: Effects and Measures*⁴⁴ by Susanne Rösner deals with the subject of money laundering, its effects and measures. The first section of the book contains a short summary of the effects of ML. The second section shows combating methods of ML in Germany. In third section, legal measures against ML are presented.

John Madinger in his book entitled *Money Laundering: A Guide for Criminal Investigators*,⁴⁵ has discussed the basics of illegal proceeds, tracing it, linking it to the criminal, and then seizing the laundered assets. He also updated it in third edition to reflect recent important court decisions of USA, changes in federal laws relating to ML, and trends in crime and TF.

⁴² Wouter Muller, Christian Kalin, John Goldsworth, *Anti-Money Laundering: International Law and Practice* (John Wiley and Sons Ltd, England, 2007).

⁴³ Mahfuzur Rahman, *Money Laundering Protirodh* (3rd ed.; Borna Binnash, Dhaka, 2010).

⁴⁴ Susanne Rösner, *Money Laundering: Effects and Measures* (Grin Verlag, Munich, Germany, 2010).

⁴⁵ Madinger John, *Money Laundering: A Guide for Criminal Investigators* (CRC Press, Florida, USA, 2011).

The book *Money Laundering Law and Regulation: A Practical Guide*⁴⁶ by Robin Booth, Simon Farrell, Guy Bastable and Nicholas Yeo, provides a practical and comprehensive guide to UK domestic anti-money laundering laws and regulations, which could be seen as key weapons in the fight against serious and organized crime. The book also provides a specific guidance to practitioners through a detailed scenario involving parallel civil and criminal proceedings and commentary on how the relevant laws are put into practice.

Peter J. Quirk carries out an analytical study on ‘Money Laundering: Muddying the Macro Economy.’⁴⁷ He analyses the ways of ML that affect macro economy. He implies that ML in which money is moving often from one country to another and causing misled data which has an adverse impact on interest rate, exchange rate volatile and tracking becomes more uncertain. He further supported in his view that ML has an impact on the economy by highlighting his empirical study that shows that ML has a negative impact on economic growth.

A study by De Boyre et al. ‘The Impact of Switzerland’s Money Laundering Law on Capital Flows Through Abnormal Pricing in International Trade’⁴⁸ indicates that there were significant changes in the abnormal international trade pricing subsequent to the enactment of Switzerland’s AML

⁴⁶ Robin Booth, Simon Farrell, Guy Bastable, Nicholas Yeo, *Money Laundering Law and Regulation: A Practical Guide* (Oxford University Press, UK, June 2011).

⁴⁷ Quirk, Peter J. “Money Laundering: Muddying the Macro Economy.” *Finance and Development, International Monetary Fund*, Vol.34, No.1 (United States, March 1997).

⁴⁸ De Boyre, Maria E., Simon J. Pak, & John S. Zdanowicz, “The Impact of Switzerland’s Money Laundering Law on Capital Flows Through Abnormal Pricing in International Trade.” *Financial Economics*, Vol.15 Issue: 4 (North-Holland, February 2005).

laws. The study supports the view that individuals and companies will find substitute techniques and channels to launder money when central banking authorities enact legislation that only focuses on financial institutions. The study evaluates every reported import and export transaction between the United States and Switzerland during 1995 to 2000.

Satish M. Kini in his work titled ‘Recent Anti-money Laundering Enforcement Actions: Lessons to be Learned at Others’ Expense’⁴⁹ has reviewed the recent high-profile enforcement actions and the article attempts to identify those measures that firms can take now to avoid headline-grabbing enforcement actions in the future. In the findings of the study the author expresses that an AML programme can only function well if it is calibrated properly to the risks that the institution’s businesses face; business growth needs to be accompanied by AML compliance growth; as institutions expand globally, they need to consider how to apply their AML programmes across geographies and to ensure that common best practices are followed by all employees.

Wouter Muller has presented money laundering as a serious crime that destabilizes society in his article on ‘The Role of Foundations in International Anti-Money Laundering.’⁵⁰ The author also focuses on the measures undertaken by the international community to combat ML in different countries of the world and analyses a possible abuse of foundations in such illegal schemes.

⁴⁹ Satish M. Kini, “Recent Anti-money Laundering Enforcement Actions: Lessons to be Learned at Others’ Expense.” *Journal of Investment Compliance*, Vol. 7, No. 3 (England, 2006).

⁵⁰ Wouter H. Muller, “The Role of Foundations in International Anti-Money Laundering.” *Trusts & Trustees*, Vol. 13, No. 5 (UK, 2007).

Shawgat S. Kutubi has explained in his article on ‘Combating Money-Laundering by the Financial Institutions: An Analysis of Challenges and Efforts in Bangladesh’⁵¹ the moves with elaborating international developments and control mechanisms to deal with the problem of money laundering in financial sector. In light of the above discussion the paper then proceeds to analyze the position of Bangladesh in terms of financial institutions in controlling money laundering keeping up with the mandate of international forum.

Elod Takáts shows in his article entitled “A Theory of ‘Crying Wolf’: The Economics of Money Laundering Enforcement”⁵² how excessive reporting, also called as ‘crying wolf’, can dilute the information value of reports and how more reports can mean less information. Excessive reporting is investigated by undertaking the first formal analysis of ML enforcement. Banks monitor their transactions and report suspicious activities to government’s agencies of all countries, which use these reports to identify investigation targets. Banks are charged with fine, if they fail to report of ML. However, excessive fines force banks to report transactions which are less suspicious. The empirical evidence is shown to be consistent with the model's predictions. The model is used to suggest implement able corrective policy measures, such as decreasing fines and introducing reporting fees.

⁵¹ Shawgat S. Kutubi. “Combating Money-Laundering by the Financial Institutions: An Analysis of Challenges and Efforts in Bangladesh.” *World Journal of Social Science*, Vol. 1, No. 2 (Australia, May 2011).

⁵² El & odblac; d Takáts, “A Theory of ‘Crying Wolf’: The Economics of Money Laundering Enforcement.” *Journal of Law, Economics and Organization*, Vol. 27, No. 1 (UK, 2011).

The article on ‘An Economic Investigation of Confiscation as a Tool Against Money Laundering’⁵³ written by Ricard Azevedo Araujo and Tito Belchior Silva Moreira, shows how money laundering is converting criminally-obtained cash into another asset form to conceal its origin. Examples of ML used in the area include drug trafficking, robbery, terrorism, tax-related offences, corruption, child pornography and people trafficking.

Armando Fernandez Steinko in his research on ‘Financial Channels of Money Laundering in Spain’⁵⁴ analyses of court documents referring to 367 cases settled down between 1995 and 2011. The numerous data obtained are contrasted to the quantitative and qualitative hypotheses published in the official papers of different international institutions to prevent ML. These hypotheses have the basis for the development of the legal principles for the implementation of AML laws worldwide. The main conclusions of the research shed some light on the economic, financial and business-related movements of illegal money. At the same time, these conclusions should invite international community to reflect on the position presently held by the empirical knowledge about criminal realities in the process of working out legal initiatives to fight against them.

World Bank, ‘Combating Money Laundering and the Financing of Terrorism: a Comprehensive Training Guide’⁵⁵ shows ML and financing of

⁵³ Ricard Azevedo Araujo and Tito Belchior Silva Moreira, “An Economic Investigation of Confiscation as a Tool against Money Laundering.” *Social Science Electronic Publishing, inc*, European Corporate Governance Institute (ECGI) (31 May 2012). Available at <SSRN: <http://ssrn.com/abstract=2071331> or <http://dx.doi.org/10.2139/ssrn.2071331>.> Accessed on 15 December 2013.

⁵⁴ Armando Fernandez Steinko, “Financial Channels of Money Laundering in Spain.” *The British Journal of Criminology (BJC)*, Vol. 52, No. 5 (UK, September 2012).

⁵⁵ World Bank, “Combating Money Laundering and the Financing of Terrorism: a Comprehensive Training Guide.” *World Bank Publications*, Vol. 3, Part. 1 (United States, 2009).

terrorism as global problems that not only threaten a country's security, but also compromise the stability, transparency, and efficiency of its financial system consequently undermining its economic prosperity. The annual global estimate for ML is more than \$1 trillion, valued in US dollars. The training guide contains numerous case studies, discussions and analyses of hypothetical and actual examples of ML schemes, and best practices in investigation and enforcement, which may help readers fully understand the implementation of successful AML/Counter Financing and Terrorism (CFT) programmes.

The above mentioned literature review concerns with ML and criminal activities and the causes behind ML, and the different measures to control ML activities around the world. From the aforesaid discussion it is found that there is no comprehensive study on proliferation of money laundering, and the role of concerned authority as well as national government in preventing ML activities in Bangladesh. Some of them are devoted to the organisational and functional aspects of ML on global perspective. Thus it can be said that these books and writings are of much worth although none of them provides with a full understanding of proliferation of money laundering. This study will try to fill in the gaps.

1.4 Methodology of the Study

The study mainly follows documentary analysis method, examines legal instruments, relevant decisions of courts of Bangladesh and abroad, along with other documents, e.g., selected international agreements where Bangladesh is a

party, and legal provisions frequently used by different AML institutes relevant to AML laws in Bangladesh. Rules, policies, data, expert opinions, government reports and other forms of written materials have been used for content analysis. The descriptive method has been used in the study to narrate the concept of ‘money laundering’ and ‘proliferation of money laundering.’ In view of strengthening the research in qualitative aspects, observations, informal discussions, and different internet sources, various reports of regional and global organizations regarding ML have also been logically considered and included in this study. The researcher would consider his practical knowledge gained during his eight years banking career (2001-2009) to some extent.⁵⁶

1.5 Objectives of the Study

The overall objective of the study is to examine the role of government in preventing proliferation of money laundering in Bangladesh. The specific objectives of the study are:

- i) To explore the concept of money laundering from both global and Bangladesh perspective.
- ii) To examine the situation of proliferation of money laundering in Bangladesh.
- iii) To examine or determine the existing anti-money laundering laws, rules or self-regulations made by different financial bodies in Bangladesh.
- iv) To find out the drawbacks of the existing anti-money laundering laws in Bangladesh.

⁵⁶ The researcher joined at Uttara Bank Limited as a Probationary Officer on 15 November 2001 and served as Principal Officer and Manager in different branches of the bank till October 2009.

- v) To identify or determine the challenges in implementing the provisions of anti-money laundering laws in Bangladesh and
- vi) To suggest proper measures or guidelines so that the government may improve its mechanism in preventing the proliferation of money laundering in Bangladesh.

1.6 Justification of the Study

A number of research works have been conducted in the field of ML abroad and a few in Bangladesh. None of them covers the implementation of existing AML laws in Bangladesh. ML is growing much rapidly in Bangladesh that warrants original research in this field. The findings of the study will contribute to the arrangement of structural and procedural safeguards in preventing ML activities and related crimes.

1.7 Utility of the Study

The present study will be helpful for AML institutions in Bangladesh. The government may be benefited from this study. This will be supportive for the government in policy making. The parliamentarians can be guided in making and improving legislation to prevent ML. Intellectuals will get their elements of thinking. Besides these, the students of law, researchers, lawyers, judges, judicial officers, teaching professionals of law in different universities will be benefited from this research work.

1.8 Scope and Limitation of the Study

The study focuses on the collaboration between laws and financial institutes. The study primarily aims to look at AML laws in Bangladesh from the

viewpoint of internationally recognized principles. The issue of ML would be scrutinized under the existing laws and rules set by established institutions partaking in preventing ML activities in Bangladesh. The economic and policy implication of the laws regarding ML is a worthy point due to the significant advancement of technologies and their misuses for the purpose of expanding ML activities and related crimes.

There are a number of new laws and initiatives of the government of Bangladesh to limit ML activities. However, most of them are yet to start their functions. This is an important cause that the study fails to cover those laws and initiatives. The limitation of the study is that the researcher has to review a number of books and articles related to money laundering issue, published on the context of different countries in the world due to a few publications on Bangladesh perspective. Another difficulty is that many authorities, including financial institutes, hesitate to provide detailed information, which could be used for the purpose of the study mainly related to Politically Exposed Persons (PEPs),⁵⁷ transparency and corruption. One more limitation of this study is that, in order to keep the thesis in a manageable size only two sectors i.e. Banks and Capital Markets are selected for the research work.

⁵⁷ PEPs refer to the following individuals: “Individuals who are or have been entrusted with prominent public functions in a foreign country, for example Head of State or of government, senior politicians, senior government judicial or military officials, senior executive of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves.” Bangladesh Financial Intelligent Unit (BFIU), Bangladesh Bank (BB), Dhaka circular No.06 (I) (g) dated 30 December 2012.

1.9 Structure of the Thesis

The study has been divided into SIX chapters and each of the chapters has further been divided into sections and sub-sections.

Following the introductory Chapter (Chapter One), Chapter Two discusses the conceptual issues of ML which deals with the meaning and causes of money laundering. This chapter also focuses on the historical background and analyses the classification including the stages and various modes of ML. This chapter includes some relevant case studies on ML concerning national and global issues.

Chapter Three focuses on the sectors of the proliferation of money laundering in Bangladesh and the causes behind those. This chapter explains the term ‘proliferation of money laundering’ and examines the causes of proliferation of money laundering. It also examines the nature and consequences of the proliferation of money laundering in Bangladesh. This chapter also analyses the achievements and main shortcomings in preventing proliferation of money laundering in Bangladesh.

Chapter Four briefly describes the existing provisions of the rules, regulations, laws, customs, and conventions at national and international level concerning ML. It also provides the background and examines the strengths, weaknesses and complexities of the relevant provisions of domestic AML laws as well as the relevant provisions of international AML norms. It analyses whether there is a need for reform of the AML laws and examines a few

existing proposals on how to improve the capability of the authority, prepares a set of suggestions to achieve the effectiveness of those laws.

Chapter Five discusses the role of the AML instruments and analyses the administrative and judicial mechanisms in implementing the provisions of AML with a view to prevent ML activities in Bangladesh. It also provides a synopsis of background including the obstacles and challenges faced by the concerned administrative and judicial authority of national and global perspective in controlling ML and implementing the existing provisions of AML laws. This chapter also includes observations on how the FATF and other related regional and global organizations are a unique cooperation forum to prevent the proliferation of money laundering. This chapter also analyses the character of the national and international laws, customs, conventions and so on, and whether this has any influence in creating new norms in national and international administrative authority and AML. It also examines both of their operational and functional frameworks, including the different entities within the national, regional and global perspectives.

The concluding Chapter (Chapter Six) prepares some suggestions on the summaries of findings and problems in each Chapter. It provides a synopsis including the strengths and weaknesses of AML laws, administrative and judicial mechanisms in Bangladesh, and identifies specific problems addressed in the thesis. It also summarizes the main arguments of the thesis and suggests the ways to prevent ML.

Chapter Two

Concept of Money Laundering

2.1 Introduction

Money is necessary both for livelihood and luxury. In the language of economics money is a matter of four functions; a medium, a measure, a standard and a store.⁵⁸ Money is also needed to maintain social well being and happiness. Often money is treated as the bone of contention between friends and relatives.⁵⁹ Some time money-wealth, property or estates have caused conflict in a family, feuds and even murders for it. It also influenced mischief and evil activities.⁶⁰ Money is also essential for investment as well as industrial development of a country. In economics, the land, labour, capital and organisation are four indicators of production. Among them the most important is capital. Capital in some form or other will always be needed.⁶¹ Sometimes the entrepreneurs are interested to make capital by ML activities and related crimes.

ML happens in almost every country in the world including Bangladesh, and a single scheme typically involves transferring money through several

⁵⁸ Alfred Milnes, *The economic foundations of reconstruction* (Macdonald and Evans, UK, 1919). p. 55.

⁵⁹ Vijay Kumar Singh, "Controlling Money Laundering in India-Problems and Perspectives." This paper was presented in a seminar held at the *Indira Gandhi Institute of Development Research* (IGIDR), India, on 23-24 January 2009. Available at <vrsingh.hpage.com/about-me_77099810.html> Accessed on 10 May 2014.

⁶⁰ Frank Desantis, "Love of Money is Root Cause Evils," (27 February 2006). Available at <[https://ezinearticles.com/?love of Money-is- Root-cause-of- Evils & id=664612](http://ezinearticles.com/?love%20of%20Money-is-Root-cause-of-Evils%20&%20id=664612)> Accessed on 10 November 2013.

⁶¹ Mohandas K. Gandhi (1869–1948), Indian political and spiritual leader. *Harijan*, Indian news paper (28 July 1940). Available at <[https://www.learnthat.org/dictionary/67035_Harijan.html](http://www.learnthat.org/dictionary/67035_Harijan.html).> Accessed on 20 March 2014.

countries in order to obscure its origins.⁶² ML, at its simplest, is the act of making money that comes from one source, looks like it comes from another source. Popularly this is known as black money to transform into white money. In practice, criminals are trying to disguise or conceal the origins of money obtained through illegal activities. Otherwise, they cannot use the money because it would connect them to criminal activities, as well as the law-enforcement authority would seize it. Moreover, it is being employed by launderers worldwide to conceal criminal activities associated with drugs or arms trafficking, terrorism, extortion and so on.

This chapter discusses the conceptual issues of ML which are very significant for the subsequent chapters. This chapter deals with the concept, historical background, classification including the stages and various modes of ML. It also discusses case studies both of foreign countries and Bangladesh.

2.2 The Concept of Money Laundering

The primary function of money is to serve as a medium of exchange. Money is also accepted without question in final discharge of debts or payment of either goods or services. The term ‘money’ generally includes banknotes as well as coins. Sometimes it also includes a right to deposit in a bank account or to invest in securities, and in some cases all real and personal property. The precise

⁶² Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012/guideline.pdf>> Accessed on 20 January 2014. p. 1.

meaning of the term depends upon the content in which it is used. It usually gives an effect to the intention of the launderers. The intermediate meaning of money laundering is connected with claims for money paid or received.

People are devoted to earn money and their major goal of education is to earn money. Although, money is the cause of many evils like corruption, black marketing, smuggling, human and drug trafficking, tax evasion etc.⁶³ Money is essential to become rich, develop the nation, and the living standard of the people. Most of them want more money to cater to their needs, and at a point of time they do not resist to have money from any sources i.e. legal or illegal. This is the available soft corner where the concept of money laundering enters and prospers.

The origin of the term ‘money laundering’ is controversial. The literal meaning of money laundering is laundering or washing illegal money which is earned from illegal sources or activities. All though, ML activities are prohibited all over the world including Bangladesh, the launderers are trying to integrate their proceeds of crime into the legitimate economy.⁶⁴ Whereas, in 1920’s the term ‘money laundering’ was practically used as an untraceable proceeds of illicit operations and thereby making the funds appear to be derived from legitimate activities.⁶⁵ Despite, the term ‘money laundering’ may have been originated in the twentieth century, the practice of disguising ill-gotten gains pre-

⁶³ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. pp. 3-4.

⁶⁴ Bourne Jane, “Money laundering: What is being done to combat it? A Comparative Analysis of the laws in the United States of America, the United Kingdom and South Africa.” *South African Mercantile Law Journal*, Vol. 14, No. 3 (South Africa, 2002). p. 475.

⁶⁵ Doyle Todd, Cleaning, “Anti-Money Laundering Strategies: Current FATF Tactics Needlessly Violates Int’l Law.” *Houston Journal of International Law*, Vol. 24, No. 2 (USA, 2002).

dates in history and indeed traces its roots back to the banking itself. There are various definitions of ML available nowadays. European Commission defines the term ‘money laundering’ as:

“the conversion of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the committing such an offence or offences to evade the legal consequences of his action, and the concealment or to disguise of the true nature source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.”⁶⁶

The fundamental concept of ‘money laundering’ is a criminal activity by which a criminal may be capable to conceal the sources of their illicit money.⁶⁷ Most of the states subscribe to the following definition which was adopted by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention 1988) and the United Nations Convention against Transnational Organized Crime (the Palermo Convention 2000).

“The conversion or transfer of property, knowing that such property is derived from any offence, e.g. drug trafficking, or offenses or from an act of participation in such offense or offenses for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in commission of such an offense or offenses to evade the legal consequences of his actions; the concealing or disguising the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offense or offenses or from an act of participation in such an offenses; and the acquisition, possession, or use of property, knowing at the time of receipt that such property was derived from an offense or offenses or from an act of participation in such offense or offenses.”⁶⁸

⁶⁶ EC Directive on prevention of the use of the Financial System for the purpose of Money Laundering 1991. Art 1.

⁶⁷ Levi Michael, “Money Laundering and its Regulations.” *American Academy of Political Science*, Vol. 582 (USA, 2002). pp. 181-194.

⁶⁸ Rudich V. Denisse, *Performing the Twelve Labours: The G 8’s Role in the fight Against Money Laundering* (London Metropolitan University, UK, 2005). p. 5.

ML is defined in Bangladesh under section 2 (V) of the Money Laundering Prevention Act 2012 as follows:-

‘Money laundering’ means-(i) Knowingly moving, converting, or transferring proceeds of crime or property involved in an offence for the following purposes:-1.concealing or disguising the illicit nature, source, location, ownership or control of the proceeds of crime; or 2. assisting any person involved in the commission of the predicate offence to evade the legal consequences of such offence; (ii) smuggling money or property earned through legal or illegal means to foreign country; (iii) knowingly transferring or remitting the proceeds of crime to a foreign country or remitting or bringing them into Bangladesh from a foreign country with the intention of hiding or disguising its illegal source; or (iv) concluding or attempting to conclude financial transactions in such a manner so as to reporting requirement under this Act may be avoided;(v) converting or moving or transferring property, with the intention to instigate or assist for committing a predicate offence;(vi) acquiring, possessing or using any property, knowing that such property is the proceeds of a predicate offence;(vii) performing such activities so as to the illegal source of the proceeds of crime may be concealed or disguised;(viii) participating in, associating with, conspiring, attempting, abetting, instigate or counsel to commit any offences mentioned above.⁶⁹

In addition to the above definitions INTERPOL has come with a new definition: “any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources.”⁷⁰

The Financial Action Task Force (FATF),⁷¹ which is recognized as the international standard setter for AML efforts, defines the term ‘money laundering’ as the processing of criminal proceeds to disguise their illegal

⁶⁹ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec- 2(v).

⁷⁰ INTERPOL, Website: <www.interpol.int/Crime-areas/Financial-crime/Money-laundering> Accessed on 15 January 2013.

⁷¹ The Financial Action Task Force on Money Laundering (FATF), formed by G-7 countries in 1989, is an intergovernmental body whose purpose is to develop and promote an international response to combat money laundering. In October, 2001, FATF expanded its mission to include combating the financing of terrorism. FATF is a policymaking body, which brings together legal, financial and law enforcement experts to achieve national legislation and regulatory AML and CFT reforms. Currently, its membership consists of 34 countries and territories and two regional organizations.

origin in order to legitimize the ill-gotten gains of crime.⁷² The real meaning of this term ‘money laundering’ is known to a few. In fact, it is a process by which criminals create illusion that the money they are spending is actually theirs to spend. Nowadays America is the most worried nation on earth about increasing trend of global ML activities and related crimes. However, the term ‘money laundering’ originated in America at the time of famous gangsterism,⁷³ particularly from the period of 1930-1960.⁷⁴

ML is a crime which is depended upon another crime. It is not also an isolated crime. ML is a process where the sources of illegal earnings are necessary to hide or disguise. The proceeds of which is the subject matter of the crime in ML. Therefore, what exactly amounts to ML, which actions and who can be prosecuted are dependent on what constitutes a predicate crime for the purpose of ML.⁷⁵ The term ‘money laundering’ is also related with the proceeds of predicate offences⁷⁶—which make laundering necessary.

⁷² Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 2.

⁷³ A gangster is a criminal who is a member of a gang. Some gangs are considered to be a part of organized crime. Gangsters are also called mobsters. Al Capone, have become infamous as a gangster.

⁷⁴ Ahmed Ali, “Anti-money laundering measures still ineffective.” *The Daily Star*, Dhaka (29 May 2004).

⁷⁵ Brigitte Unger, *The Scale and Impacts of Money Laundering UK* (Edward Elgar Publishing, UK, 2007). p. 16.

⁷⁶ Predicate Offence means: The offences from which the proceeds derived from committing or attempt to commit the following offences: corruption and bribery; counterfeiting currency; counterfeiting documents; extortion; fraud; forgery; illicit arms trafficking; illicit dealing in narcotic drugs and psychotropic substances; illicit dealing in stolen and other goods; kidnapping, illegal restraint, hostage-taking; murder, grievous bodily injury; woman and child trafficking; smuggling and unauthorized cross-border transfer of domestic and foreign currency; theft or robbery or dacoity; trafficking in human beings and illegal immigration; dowry; Terrorism and Terrorist Financing; Counterfeiting and Piracy of Products; Environmental Crime; Sexual Exploitation; Taking market advantage through transactions by using price sensitive information of the capital market before it becomes public and trying to control or manipulate the market to gain personal advantage (Insider trading and market manipulation) ; Organized Crime and any other offence which Bangladesh Bank with the approval of the Government and by notification in the Official gazette declares as predicate offence for the purpose of this Act. *The Prevention of Money Laundering Act, 2012* (Act No. 5 of 2012). Sec-2(cc).

ML became an issue both at national and international level in 1980 with the rise of world-wide drug trafficking. At the same time, AML movements or operations are also associated to stop criminals benefit from their crimes and to back them from those criminal activities or proceeds.⁷⁷

2.3 Historical Background of Money Laundering

The practice of ML has a long history. The launderers are using different techniques and modes over the years to launder money, though the aim has been the same. It is very difficult to find out the clear proof that suggests when the term ‘money laundering’ was used foremost. However, it may be explained in several ways referring to the historical sense of the term ‘money laundering’. Sterling Seagraves, the American historian explores the phenomenon of merchant conducts in operating businesses in China since 3000BC.⁷⁸ At that time, funds were concealed by hiding, moving, and investing in remote provinces or even outside of China. Arguably, their reason for hiding their wealth was legitimate in the sense that they had worked for their money and ought to have a right to keep and enjoy the fruit of their hard labour. However, by not disclosing their total worth, they engaged in tax evasion which is a criminal act and the practice of hiding proceeds of income is ML. Even though the term ‘money laundering’ was not invented, yet the principles of ML were founded to some extent. These included the conversion of illicit funds into movable assets and then moving them outside its jurisdiction to invest in other legal economies.

⁷⁷ Ellinger E.P and et al., *Ellinger's Modern Banking Law* (4th ed.; Oxford University Press, UK, 2006). p. 94.

⁷⁸ Sterling Seagrave, *Lords of the Rim: The Invisible Empire of the Overseas Chinese* (New York: Putnam's Sons, 1995). p. 12.

The term ‘money laundering’ originated in 1920 from the United States of America when organized crime used *Laundromat* businesses to shape the unlawful sources of its currency.⁷⁹ The mafia (with the likes of Al Capone) generated vast amounts of cash from criminal activities such as trading illicit drugs, murders, prostitutions, and gambling. To avoid the confiscation of their proceeds, they operated retail service businesses such as bars, vending machines, hotels, and restaurants. Through these legal businesses, the illegal money was mixed with the legal proceeds and the total amount was reported as the total earnings of the legitimate business. The illegal earnings turned legitimate by using this technique and then the money took on the appearance of a legitimate business. The money could then be used freely without attracting the attention of law enforcement authorities.

The term ‘money laundering’ came into use after the case of *Mayer Lansky in the United States* (1932).⁸⁰ Mayer Lansky was one of the prominent leaders of these groups, and he is regarded as the originator of modern ML.⁸¹ He engaged in elaborate laundering of dirty money made through gambling in 1920-1930. In 1932, Lansky carried out an offshore account in a Swiss Bank that was used to hide criminal proceeds of Huey Long, the Governor of Louisiana.⁸² The Swiss has created the principle of Bank Secrecy under the Swiss Bank Act, 1934. Lansky

⁷⁹ Wouter Muller, Christian Kalin, John Goldsworth, *Anti-Money Laundering: International Law and Practice* (John Wiley and Sons Ltd, England, July 2007). p. 45.

⁸⁰ Wilmer Parker, ‘Black/Parallel Markets: When is A Money Exchange A Money Laundering?’ *Dickinson Journal of International law*, Vol.13 (USA, 1995). p. 423.

⁸¹ Abdullahi Y. Shehu, *Economic and Financial Crimes in Nigeria: Policy Issues and Options*, (National Open University of Nigeria, Victoria Island, Lagos, 2006). p. 219. Available at <http://en.wikipedia.org/wiki/money-_laundering> Accessed on 21 November 2013.

⁸² Abdullahi Shehu, ‘Money-Laundering: The Challenge of Global Enforcement.’ *Dickinson Journal of International law*, Vol.13 (USA, 2000). p. 2.

bought a Swiss bank and steadily transferred illicit funds into it through his several shell and holding companies as well as offshore bank accounts.⁸³ Having smuggled the proceeds from various businesses into Swiss bank, Lansky later established a slot machine house in New Orleans and the Swiss Bank provided funds in the form of loans to Lansky & Co.⁸⁴ This way, the bank allowed illegal money to return to the United States of America. Since then, ML activities have evolved into using technological advancements.⁸⁵ According to Jeffrey Robins, the first reference to the term ‘money laundering’ was made by the British Guardian newspaper during the Watergate Scandal to describe the practice of moving dirty money from the US into Mexico and returning them to the US through a company in Miami before donating it to the Committee that was set up to facilitate the re-election of President Nixon.⁸⁶

In the early 1970, the concept of ‘money laundering’ came into existence when the United States Bank Secrecy Act (BSA), 1970 was enacted. This Act requires financial institutions to file record keeping and reporting requirements for currency transactions if the transaction is \$10,000 or more.⁸⁷ The aim of this Act was to provide law enforcement authorities with the tools

⁸³ Abdullahi Y. Shehu, *Economic and Financial Crimes in Nigeria: Policy Issues and Options*, (National Open University of Nigeria, Victoria Island, Lagos, 2006). p. 219. Available at <http://en.wikipedia.org/wiki/money-_laundering> Accessed on 21 November 2013.

⁸⁴ Abdullahi Shehu, *op.cit.*, p. 2.

⁸⁵ *Ibid.*

⁸⁶ Jeffrey Robins, “Money Laundering: The Laundrymen, The Merger and The Sink.” Website: <http://en.wikipedia.org/wiki/money_laundering> Accessed on 15 April 2013.

⁸⁷ The Currency and Foreign Transactions Reporting Act of 1970 requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. Specifically, the act requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. Available at <www.webcrawler.com/Banking> Accessed on 2 December 2013.

necessary to prevent or control ML activities and related offences. The BSA includes few provisions to keep record of the Suspicious Activity Report (SAR); a Currency Transaction Report (CTR); a report on foreign bank accounts; and reports on cross-border movement of currency and monitoring instruments. The rationale for these reporting-based systems is to create a 'paper trail' that aids law enforcement agencies in prosecuting ML cases. The federal government indicted the first National Bank of Boston for its failure to report a series of cash transactions in February 1985, involving more than \$1.2 billion under the Bank Secrecy Act of 1970.⁸⁸ The Bank of Boston pleaded guilty and was fined \$500,000 based on this indictment.

The term 'money laundering' was first used in the primary legal document in 1982 through the case of civil forfeiture between *United States v \$4,255,625*.⁸⁹ This case concerned the efforts to conceal or disguise ill-gotten gain and civil forfeiture of large sums of money from Molins in Columbia to Sonal in Miami, Florida. In its decision, the court concluded that the transfer of sums from Molins to the bank in Sonal was more likely a ML process. Although the court did not define the term, scholars concluded that this phenomenon referred to ML. The effective implementation and enforcement of the BSA of 1970 (USA), despite the detection, investigation, and prosecutorial successes in these cases, also reveal the some of the problems

⁸⁸ Frederick J. Knecht, "Extraterritorial Jurisdiction and the Federal Money Laundering Offence." *Stanford Journal of International Law*, Vol. 22 (United States, 1986). p. 391.

⁸⁹ Heba Shams, *Legal Globalization: Money Laundering Law and Other Cases* (London: British Institute of International and Comparative Law, 2004). p. 26.

investigators encountered with the BSA. Compliance was lax, and courts were inconsistent in their judgment of an individual's requirement to report.⁹⁰ Congress enacted the Money Laundering Control Act (MLCA) of 1986. Two sections of this Act are noteworthy. Section 1956 addresses certain financial transactions involving the proceeds of 'specified unlawful activity', and 1957 addresses any monetary transaction in property known to derive from a specified unlawful activity. Section 1956 has three subsections: 1956(a) (1) addresses domestic money laundering, 1956(a)(2) addresses international money laundering; and 1956(a)(3) involves sting operations.⁹¹ This Act was intended to create a liability for individuals who conduct financial transactions with the knowledge that the funds' origins were either illegal or illicit. The intention to make ML a crime according to the Senate Judiciary Committee was to create a Federal offense against ML, to authorize forfeiture of the profits earned by launderers, to encourage financial institutions to come forward with information about money launderers without fear of civil liability, to provide Federal law enforcement agencies with additional tools to investigate ML, and to enhance the penalties under existing law in order to further deter the growth of ML. This Act prohibits both conducting a monetary transaction knowing, or with reason to know, that the funds were derived from unlawful activity, and the transportation, transmitting, or transferring of funds with the knowledge that those funds were derived from unlawful activity. The Act has categorized

⁹⁰ Jeanne Bickford, "Filthy Lucre: A Socio-Legal Study of the Criminalization of Money Laundering." (Dissertation, University of California, Irvine, 1996). p. 43.

⁹¹ Andres Rueda, *International Money Laundering Law Enforcement & the USA PATRIOT Act 2001* (10 Mich. St. U. Det. C. L.J. Int'l, 2001). p. 147.

three ML practices as criminal offences, namely: active engagement in the laundering of money, willingness to accept monies that originate from criminal activities and structure transactions in a way to evade reporting requirements. The Act also provides both civil and criminal sanctions; civil sanctions include fines of up to \$10,000 and forfeiture; while, criminal sanctions include imprisonment for up to 20 years and fines of up to \$500,000 or twice the amount laundered.⁹²

The basic characteristics of ML are the proceeds of crime, which to a large extent also mark the operations of organised and transnational crime are its global nature, the flexibility and adaptability of its operations, the use of the latest technological means and professional assistance, the ingenuity of its operators and vast resources at their disposal, according to UN Report (1993). The characteristics of ML also include the constant pursuit of profits and the expansion into new areas of criminal activity. Money represents the lifeblood of the organization/person that engages in criminal conduct for financial gain because it covers operating expenses and pays for an extravagant lifestyle. To spend money in these ways, criminals must make the money they derived illegally appear legitimate.⁹³ A trail of money from an offense to criminals can become incriminating evidence. The launderers must obscure or hide the source

⁹² Senate Report 433, Senate Committee on the Judiciary 1986 on *the Money Laundering Crime Act 1986*, Cited in Jeanne Bickford, "Filthy Lucre: A Socio-Legal Study of the Criminalization of Money Laundering." (Dissertation, University of California, Irvine, 1996). p. 31.

⁹³ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance Notes on Prevention of Money Laundering and Terrorist Financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 2.

of their wealth or alternatively disguise ownership or control to ensure that illicit proceeds are not used to prosecute them.⁹⁴ The proceeds from crime often become the target of investigation and seizure. To shield ill-gotten gains from suspicion and protect them from seizure, launderers must conceal their existence or, alternatively, make them look legitimate.⁹⁵

The process of ML usually involves several steps that make it difficult to trace the original source of money. Some of these steps include transferring the money between bank accounts, breaking up large amounts of money into small deposits, or buying acceptable forms of money such as Fixed Deposit Receipt (FDR), Demand Draft (DD), Payment Order (PO), Security Deposit Receipt (SDR), and Travelers' Cheque. The process is usually planned and organized to avoid being caught and put to face punishment.

The character of ML as international dimension of ML shows in a study of Canadian ML police files which revealed that over 80% of all laundering schemes had an international dimension. The nature of modern ML shows as a transnational character in the Operation Green Ice-1992 in Colombia. ML was put on to the world stage through the adoption of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.⁹⁶ A provision includes in the convention for its parties to

⁹⁴ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance Notes on Prevention of Money Laundering and Terrorist Financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014., p. 3.

⁹⁵ *Ibid.*

⁹⁶ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter: the 1988 UN Vienna Convention), open for signature in Vienna, Austria in December 1988 and enter into force in November 1990.

criminalize ML and drug trafficking.⁹⁷ The convention also includes a provision to acknowledge controlling or preventing internationalization and criminalization of ML activities.⁹⁸ The significant role of the convention is to introduce the concept of ML. Many countries have developed the concept of ML in their national legislations by following the convention.

Corruption is widely spread in different countries including Bangladesh. Among its many form, ML has been a very major one which is hindering the economic growth of a country like Bangladesh. According to Wikipedia, ML is a process whereby illegal sources of money are tried to be cloaked with a look of the fair sources so that nobody can doubt the sources at first instance. Transfer, transformation, sending or bringing of money, to or from any foreign country respectively, which is earned through a related offence and smuggling property acquired through a legal or illegal means is ML. To conduct criminal activities, huge amount of money is needed and sometimes it needs to be spent in open daylight. For these reasons, money may bear a fair mask with it. At the same time, this illegal money may be strong evidence against the perpetrators and so to avoid this result, they need to convert their money into good money. ML is an offence under the Money Laundering Prevention Act (MLPA), 2012 of Bangladesh.⁹⁹ The institutions such as banks, insurance companies, and money changers have to submit report to Bangladesh Financial Intelligence Unit (BFIU) of Bangladesh Bank on suspicious transactions under MLPA,

⁹⁷ *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*. Art 3(1) (a) and (b).

⁹⁸ William C. Gilmore, *Money Laundering: The International Aspect* (Edinburg University Press, UK, 1993), p. 2.

⁹⁹ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec- 2(V).

2012 section 2(z). Doing any kind of transaction for which no report is needed under this Act and concealing any act which covers the illegal source of the money also come under ML activities. The MLPA, 2012 also included a list of predicate offences, section-2(cc). If anybody commits the offence or helps to commit it, then he will be imprisoned for not less than four years and not more than twelve years including forfeiture of the property related to ML activities and related crimes.¹⁰⁰ Money obtained by an illegal action is not, of itself, laundered money in most jurisdictions. An exception is being the United Kingdom where mere possession of the proceeds of any crime is itself capable of being a ML offence. The laundering offence comes from the attempt to conceal its source, not because the transaction was itself illegal which is a separate offence.¹⁰¹

2.4 Classification of Money Laundering

ML is a multidimensional act, constituted both at national and international dimension. The classification of ML is required in order to make an evaluation of unusual transactions and events. It may be classified on the basis of its stages and modes or techniques.

2.4.1 Stages of Money Laundering

ML can occur at three steps¹⁰² i.e. Placement, Layering and Integration. These are explained below:

¹⁰⁰ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec- 4(2).

¹⁰¹ *The Proceeds of Crime Act 2002(USA)*. Sec-329.

¹⁰² Faggal Paul, "The Anti-Money Laundering Provisions of the Patriot Act: Should They be Allowed to Sunset?" *Saint Louis University Law Journal*, Vol. 50:1361(USA, 2006).

Placement

ML occurs everywhere in the world including Bangladesh through different stages, among them the placement is a common stage. Placement is a process of placing dirty money into the financial system to move away the funds from its original location. In the initial stage money launderers often deposited cash by opening up a bank account in the name of unknown individuals or organizations.¹⁰³ It is very difficult to detect laundering fund due to massive increasing of the placement of funds into the financial system.¹⁰⁴ The launderers are using the *smurfing*¹⁰⁵ process to avoid the suspicious transaction report.¹⁰⁶ Therefore, although financial institutions are maintaining the AML execution programmes, the developing process of *smurfing* demonstrates the difficulty of eradicating ML activities.¹⁰⁷ Purchasing expensive property and selling; creating legitimate business that typically deals in cash like hotels and bars are among other mechanisms used in the placement stage in order to obscure the source of illegitimate money.¹⁰⁸

Layering

Another important stage of ML is layering. Layering is the process of moving dirty money through different components of the financial system to obscure its

¹⁰³ Bachus S. Alison, "From Drugs to Terrorism: The Focus Shifts in the International Fight against Money Laundering after Sep. 11, 2001." *Arizona J. Int'l and Comp. Law*, Vol. 21, No. 3 (2004). p. 842.

¹⁰⁴ Daley J. Modelyn, "Effectiveness of United States and International Efforts to Combat International Money Laundering." *St. Louis Warraw Transathantic Law Journal* (2000). p. 175.

¹⁰⁵ In this process a number of individuals make small deposits in a number of different depository institutions.

¹⁰⁶ Sarah Jane Hughes, "Policing Money Laundering Through Fund Transfer: A Critique of Regulation Under the Banking Secrecy Act." *Indian Law Journal*, Vol. 67:283, (1992). p. 16

¹⁰⁷ Faggal Paul, "The Anti-Money Laundering provisions of the Patriot Act: Should They be Allowed to Sunset?" *Saint Louis University Law Journal*, Vol. 50:1361(USA, 2006).

¹⁰⁸ *Ibid.*

original sources. Layering conceals the audit trail and provides anonymity.¹⁰⁹ These are achieved by moving money to offshore bank accounts in the name of Shell Companies, purchasing high value commodities like diamonds, and transferring the same to different jurisdictions. Now Electric Fund Transfer (EFT) has been included for such layering exercise. At the particular juncture of the process, launderers separated the illicit proceeds from their sources through complex and often illusory transactions disguising the provenance of the funds to different jurisdictions. Different techniques like loan at low or no interest rate, money exchange offices are utilized for the purpose of shares and trust offices are utilized for the purpose of laundering money at this particular juncture. There are a number of characteristics that might indicate ML activities. Seemingly ludicrous financial transactions like large number of sales and purchases subject to commission, numerous accounts, ostensibly unconnected being consolidated into a smaller amount of accounts and lack of concern over losses on investment, bank charges or professional advisor charges are among the traits to be mentioned.¹¹⁰ Therefore, once the money has worked its way into the financial system, it would be rarely detected independently of criminal investigation and hence needs agreement with other countries to have success in stopping ML at the layering stage.¹¹¹

¹⁰⁹ Nicholas Clark, "The Impact of Recent Money Laundering Legislation on Financial Intermediates." *Dickinson Journal of International Law*. Vol. 14, No. 3 (USA, 1996). p. 470.

¹¹⁰ Faggal Paul, "The Anti-Money Laundering provisions of the Patriot Act: Should They be Allowed to Sunset?" *Saint Louis University Law Journal*, Vol. 50:1361 (USA, 2006).

¹¹¹ *Ibid.*

Integration

Integration is the final stage of ML. The launderers generally use the integration stage to launder their illegally earned money. It is the process of mixing with clean money and developing it in the legitimate business and economic activities and back to the launderer as clean money.¹¹² The launderers normally accomplish this by setting up unknown institutions in nations where secrecy is guaranteed.¹¹³ The integrated funds from a criminal enterprise would very often be similar to legitimate business. New forms of business give a platform for integration exercise. Now a person can start a business with just a webpage and convert his illegal money to legal by showing profits from webpage. Finally, integration of illicit proceeds can be fought through the strengthening of asset forfeiture laws, by which governments can seize the proceeds of criminal activity even when those proceeds have been reinvested in ostensibly legitimate enterprises. The government of Bangladesh is working to improve methods by which asset forfeiture regimes, and asset sharing among law enforcement agencies of different countries, to make it more difficult for criminals to protect their money from the law.

All the ML transactions need not go through the three stages, where one stage begins-the others end.¹¹⁴ The other ways/medium of ML is capital market investments, real estate acquisitions, catering industry, gold and diamond market and so on.

¹¹² Mariano-Florentino Cuellar, "The Tenuous Relationship between the Fought against Money Laundering and the Disruption of Criminal Finance." *Journal of Criminal Law Criminology* Vol. 2, No. 3 (North Western University, USA, 2003).

¹¹³ A Kathleen, Lacey and Barba Crutchfield George, *Crackdown on Money Laundering: A comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reform*. (23 NW. J. Int'l Law and Business, USA, 2003).

¹¹⁴ Faggal Paul, "The Anti-Money Laundering Provisions of the Patriot Act: Should They be Allowed to Sunset?" *Saint Louis University Law Journal*, Vol. 50:1361 (USA, 2006).

2.4.2 Modes of Money Laundering

Mode of ML changes from time to time. At each of the three stages of ML various modes or techniques are applied. It is really not possible to explain all the techniques of ML exercises; however some techniques are illustrated for the sake of understanding, for example,

(I) General Modes and

(II) Rare Modes

2.4.2.1 General Modes

There are some methods that money encompasses laundering including financial and non-financial institutions to which the followings are general:

Hundi

Hundi is an alternative or parallel remittance system of Bangladesh. The *hawala* is another such well known system in the Indian subcontinent and in trade related to the Arabs, the *chop shop/chitti* banking or flying money system has its origin in the traditional Chinese banking practices and the black market peso exchange system prevalent in Latin America is of recent origin and also used around the world.¹¹⁵ These systems are often referred to as an ‘underground banking’; this term is not always correct; as they often operate in the open with complete legitimacy, and these services are often heavily and effectively circulated. It exists and operates outside of, or parallel to ‘traditional’ banking or financial channels. It was developed in Bangladesh,

¹¹⁵ Jyoti Trehan, *Crime and Money Laundering-The Indian Perspective* (Oxford University Press, India, 2004). Available at <<http://money.howstuffworks.com/personal-finance/banking/international-banking.htm>> Accessed on 15 February 2014.

before the introduction of western banking practices, and it is currently a major remittance system used around the world.¹¹⁶ In *hundi* network the money is not moved physically. The process is also speedier and cheaper.

Bulk Cash Smuggling

Bulk cash smuggling is a general mode of ML in Bangladesh. Bulk cash smuggling means, physically smuggling of cash from one jurisdiction to another, and it is deposited in a financial institution, such as an offshore bank, with greater bank secrecy or less rigorous ML enforcement.¹¹⁷

Non Cash Proceeds

A non cash proceeds is also another mode of ML in Bangladesh. Non cash proceed is a system where some of these steps i.e. placement, layering and integration may be omitted, depending on the circumstances. The proceeds that are already in the financial system would have no need for placement.¹¹⁸ These non-cash proceeds include depreciation or write-offs on bad debts or credit losses to name a few.

Black Market Peso Exchange (BMPE)

The Black Market Peso Exchange (BMPE) is a common mode of ML in Latin American Countries. The BMPE is also used in Bangladesh in different name and frame. The BMPE is a system by which drug money profits are laundered

¹¹⁶ Jyoti Trehan, *Crime and Money Laundering-The Indian Perspective* (Oxford University Press, India, 2004). Available at <<http://money.howstuffworks.com/personal-finance/banking/international-banking.htm>> Accessed on 15 February 2014.

¹¹⁷ Kevin Sullivan. "How to Spot Bulk Cash Smuggling?" (6 July 2010). Website: <www.bankinfosecurity.com/.../how-to-spot-bulk-cash-smuggling-p-604> Accessed on 7 December 2013.

¹¹⁸ Peter Reuter & Edwin M. Truman, *Chasing Dirty Money: The Fight against Money Laundering* (Peterson Institute, USA, 2004). p. 169.

through the use of international trade and blocked currency accounts.¹¹⁹ For example; a drug trafficker turns over dirty money to a peso broker in Bangladesh. The peso broker then uses that drug money to purchase goods in India for Bangladeshi importers. When the importers receive those goods and sell them for persons in Bangladesh, they pay back the peso broker then give the drug trafficker the equivalent in pesos without commission of the original, dirty money that began the process. This method is also utilized extensively by the drug cartels to repatriate drug proceeds commonly referred to as the BMPE.

Cheque

The use of cheque for payment is a common practice all over the world. The launderers are using cheques to launder money. Cheque is an important negotiable instrument which can be transferred by mere hand delivery. Cheque is used to make safe and convenient payment. The third party purchasing or utilizing counter cheques or bankers drafts drawn on different institutions and clearing them via various third party accounts. Third party cheques and traveler's cheque are often purchased using proceeds of crime. Since these are negotiable in many countries, the nexus with the source money is difficult to establish.

Credit Cards

The uses of credit cards are increasing day by day all over the world. A credit card is a payment card issued to users as a system of payment. It allows the

¹¹⁹ Bill E. Branscum, "Colombian Black Market Peso Exchange: An Instrument of Commerce, or Crime." (1 January 2010). Website: <www.fraudsandscams.com/CBMPE/CBMPE.htm> Accessed on 5 December 2013.

cardholder to pay for goods and services based on the holder's promise to pay for them.¹²⁰ The issuer of the card creates a revolving account and grants a line of credit the consumer or the user from which the user can borrow money for payment to a merchant or as a cash advance to the user. Clearing credit and charge card balances at the counters of different banks; such cards have a number of uses and can be used across international border. For example, to purchase assets, for payment of services or goods received or in a global network of cash-dispensing machines.¹²¹

Trade-based

Trade and business plays an important role in the development of a country. In the era of globalization, trade and business is also increasing nationwide. The launderers are using trade and business as a mode of ML. Trade-based ML is an alternative remittance system that allows illegal organisations the opportunity to earn; move and store proceeds disguised as legitimate trade. Documents play a key role in international transactions. Both buyers and sellers need documents for bookkeeping, accounting, taxation, export and import formalities, as well as making payments using letters of credit and other documentary payment methods. Value can be moved through this process by false-invoicing, over-invoicing and under-invoicing commodities that are imported or exported around the world in order to disguise the movement of

¹²⁰ Steven M. Sheffrin, *Economics: Principles in action* (Upper Saddle River, New Jersey, USA, 2003). p. 261.

¹²¹ Financial Action Task Force (FATF). "Global Money Laundering and Terrorist Financing Threat Assessment." Website: <<http://www.fatf-gafi.org/dataoecd/48/10/45724350.pdf>> Accessed on 3 March 2013.

global trade. It is habitually used by launderers/criminal organisations to move value around the world through the complex and sometimes confusing documentation that is frequently associated with legitimate trade transactions.¹²² Moreover, methods can range from the purchase and re-sale of a luxury item to make investment in business.

Cash-intensive Business

The practice of cash-intensive business is an alternative mode of ML. Cash-intensive document is not an official pronouncement of the law or the position of the service and cannot be used, cited, or relied upon as such. A business typically involved in receiving cash will use its accounts to deposit both legitimate and criminally derived cash, claiming all of it as legitimate earnings. Often, the business will have no legitimate activity.¹²³

Real Estate Business

The culture of real estate business is increasing with the economic development of a country like Bangladesh. Real estate is a property consisting of land and the buildings on it, along with its natural resources such as crops, minerals, or water; immovable property of this nature; an interest vested in this; (also) an item of real property; (more generally) buildings or housing in general. The business of real estate incorporated to buying, selling, or renting land, buildings or housing. Real estate may be purchased with illegal proceeds, and then sold.

¹²² An invoice, bill or tab is a commercial document issued by a seller to the buyer, indicating the product, quantities, and agreed prices for products or services the seller has provided the buyer. An invoice indicates the sale transaction only. Available at <en.wikipedia.org/wiki/Invoice> Accessed on 15.02.2014.

¹²³ Financial Action Task Force (FATF). "Global Money Laundering and Terrorist Financing Threat Assessment." Website: <<http://www.fatf-gafi.org/dataoecd/48/10/45724350.pdf>> Accessed on 3 March 2013.

The proceeds from the sale appear to outsiders to be legitimate income. Alternatively, the price of the property is manipulated; the seller will agree to a contract that under-represents the value of the property, and will receive criminal proceeds to make up the difference.¹²⁴

It is convenient in Bangladesh to sell and buy properties as the payment of tax is calculated on the basis of value fixed at government rate and not on transacted amount. This has been going on for many years whether the amount transacted involves the financial institutions or cash. It would be highly unfair to discriminate between the two, because both in essence represent excess of payments over the registered deed value, as is fixed by the relevant government authority, to the seller or his representative by the buyer or his representative. For systemic reasons, it would not be proper to treat such payments within the country as ML, without revamping the documentation and registration arrangements. If the same is considered ML, hardly anyone involved in all kinds of land or property transfers by sales and purchases over the years would be spared.¹²⁵

Casinos

The use of casino is very much popular, in the era of free trade. Although, the use of casino is a western culture, it impacts on the culture of Bangladesh. A casino is a facility which houses and accommodates certain types of gambling activities. Casinos are most commonly built near or combined with hotels, restaurants, retail

¹²⁴ Financial Action Task Force (FATF). "Global Money Laundering and Terrorist Financing Threat Assessment." Website: <<http://www.fatf-gafi.org/dataoecd/48/10/45724350.pdf>> Accessed on 3 March 2013.

¹²⁵ M.S. Siddiqui. "Need for Reviewing Anti-money Laundering Law to Serve Its Real Purpose." *The Financial Express*, Dhaka (27 July 2009).

shopping, cruise ships or other tourist attractions. An individual will walk into a casino with cash and buy chips, play for a while and then cash in his chips, for which he will be issued a check. The money launderer will then be able to deposit the check into his bank, and claim it as gambling winnings.¹²⁶

Structuring

The practice of structuring is a general mode of ML all over the world. Structuring is often known as *smurfing*. It is a method of placement by which cash is broken into smaller deposits of money, used to defeat suspicion of ML and to avoid AML reporting requirements. It focuses on making funds untraceable through diversification. Many countries have financial regulations that require banks to file a report for any suspicious transaction over a certain set amount.¹²⁷ Launderers skirt this regulation by taking dirty money and depositing it into many different accounts, investments, and even physical property, often under different names and in different countries. A sub-component of this is to use smaller amounts of cash to purchase bearer instruments, such as money orders, and then ultimately deposit those, again in small amounts.¹²⁸

2.4.2.2 Rare Modes

There are some alternative methods that money encompasses laundering including financial and non-financial institutions to which the following are unique:

¹²⁶ “National Money Laundering Threat Assessment.” (December, 2005). p. 33.

Website: <<http://www.justice.gov/dea/pubs/pressrel/011106.pdf>> Accessed 3 March 2013.

¹²⁷ In the United States, this smaller amount has to be below \$10,000—the dollar amount at which U.S. banks have to report the transaction to the government. Available at: <https://money.howstuffworks.com/money_laundering_3.htm> Accessed on 15 February 2013.

¹²⁸ “Structuring Financial Transactions to Evade Reporting Requirements.” Website: <<http://www.buchananingersoll.com/news.php?NewsID=1424>> Accessed on 3 March 2014.

Waiver

The waiver generally used for making black money white in Bangladesh. The economy of Bangladesh is flooded with a high component of black money. The Government, needless to say, faced the urgent requirement of channeling this huge amount of black money circulation into more productive means for the upbringing and development of the country. To achieve this prerogative the government introduced the Black Money to White Money scheme by giving certain percentage of Tax.¹²⁹ This scheme prompted huge sums of illegitimately earned income to be pushed into the government machinery. According to the National Board of Revenue (NBR) statistics, BDT Tk.12,996 crore has been whitened and BDT Tk.1,368 crore has been collected as taxes since 1975.¹³⁰ The present government has been giving amnesty for black money from its first year in office. In fiscal year 2009-10, it allowed whitening undisclosed money in four sectors, where 1,923 people legalised BDT Tk 923 crore.¹³¹

Trusts

The practice of trust is also a mode of ML. Trust is a fiduciary relationship in which one party, known as a trustor, gives another party, the trustee, the right to hold title to property or assets for the benefit of a third party, the beneficiary.¹³² ML methods sometimes involve investments in fake companies, called ‘shells,’ or legitimate companies, called ‘fronts.’ These operations usually involve faking

¹²⁹ The debate over allowing or disallowing of whitening of undisclosed sums of money is a strong one. The proposed provision for legalising moneys that is off the books envisages a payment of a flat penalty @10 percent.

¹³⁰ Editorial, “Bangladesh’s Legalising Black Money.” *The Daily Star*, Dhaka (1 June 2012).

¹³¹ *Ibid.*

¹³² Website: <www.investopedia.com/terms/t/trust.asp> Accessed on 10 October 2013.

receipts and evidence to record profits for transactions that are actually from funneled laundering funds. Businesses that deal primarily in cash and have a relatively low weekly or monthly deposit level are often targets of laundering. Service-oriented businesses, as opposed to goods-providing businesses, are also commonly used, since there is less evidence of a service than of a purported good. These are fake companies that exist for no other reason than to launder money. They take in dirty money as ‘payment’ for supposed goods or services but actually provide no goods or services; they simply create the appearance of legitimate transactions through fake invoices and balance sheets. Trusts and shell companies disguise the true owner of money. Trusts and corporate vehicles, depending on the jurisdiction, need not disclose its true, beneficial, owner.¹³³

Fake Inheritance

The practice of fake inheritance is a common mode of ML in Indian Subcontinent. The technique of laundering money is related to inheritance of jewellery and wealth. To this extent married women or men launderer laundered their illegal proceed of earnings, for instance, at the time of opening income tax file most of the people of Bangladesh shows/includes excess or non existing wealth or ornaments, which have gained as a gift at the time of their marriage. The Indian inheritance law permits a married woman to acquire jewellery worth (Indian Rupee) Rs.5,00,000.¹³⁴

¹³³ Financial Action Task Force (FATF). “Global Money Laundering and Terrorist Financing Threat Assessment.” Website: <<http://www.fatf-gafi.org/dataoecd/48/10/45724350.pdf>> Accessed on 3 March 2013.

¹³⁴ Jyoti Trehan, *Crime and Money Laundering-The Indian Perspective* (Oxford University Press, India, 2004). p. 18. Available at <<http://money.howstuffworks.com/personal-finance/banking/international-banking.htm>> Accessed on 15 February 2014.

Black Salaries

The launderers use the mode of black salaries to launder their illegally earned money. Companies might have unregistered employees without a written contract who are given cash salaries. Black cash might be used to pay them. It is found in Bangladesh especially in garments factory.¹³⁵

Multilevel Marketing (MLM) Companies

Multilevel Marketing (MLM) is a recent activity and trend added to the business of Bangladesh. It is a concept used by many countries around the world with USA, Canada, Singapore, Malaysia, Taiwan, and India almost for last 55 years. And it entered the Bangladesh in 1998 through a Canadian based company GGN (Global Guardian Network) and Bangladesh based company Bangladesh Network System (BNS). Multi-Level Marketing (MLM) is a business opportunity that goes by many names like-Multi-Level Marketing, network marketing, direct selling person to person marketing, matrix marketing, or one to one marketing etc.¹³⁶ The business of Multilevel Marketing (MLM) Company is very popular in Bangladesh. A large number of people are involved in these sectors and they invested huge amount of capital to earn profit although, they have not a clear concept of MLM business. On the other hand, people are more formal and positive doing this business and they are financially benefited. Bangladesh Bank has warned the people against investing in MLM companies that offer abnormal profits in a short span of

¹³⁵ “National Money Laundering Threat Assessment.” (December 2005). p. 33. Available at <<http://www.justice.gov/dea/pubs/pressrel/011106.pdf>> Accessed on 15 February 2014.

¹³⁶ Details in chapters 2.6.

time. The investors can get deceived by these companies that come up with schemes offering 10 percent or more profits a month upon investments in gold markets abroad or foreign exchanges. Although the Anticorruption Commission has filed cases against several companies and the central bank has stopped their operations, they have continued their business under different names. According to the Register of Joint Stock Companies and Firms, there are 70 MLM companies operating in Bangladesh.¹³⁷

Unauthorized Expatriate

A large number of Bangladeshi workers are living around the world. Unauthorized Expatriates are those people who are living all over the world beyond their own nationality without taking proper approval or consent of the concerned authority, for instance, around 50(Fifty) thousand Bangladeshi workers are staying as illegal immigrants in Maldives.¹³⁸ The unauthorized expatriates are sending their earned money from abroad using illegal channel.

Capital Flight

Capital flight is a sensitive way of ML in Bangladesh as well as all over the world. There is no universal single definition of capital flight. The term ‘capital flight’ is used in different modes. Generally capital flight means the movement of money from one investment to another in search of greater stability or increased returns. Specifically it refers to the movement of money from investment in one country to another in order to avoid country-specific risk

¹³⁷ Website: <bdnews24.com/aam/mr/sh/pks/bd/1920h> Accessed on 9 January 2014.

¹³⁸ Editorial, “Expatriate Workers’ Plights in Maldives.” *The Daily Star*, Dhaka (11 May 2012).

such as high inflation or political turmoil or in search of higher returns. Capital flight is seen most commonly in massive foreign capital outflows from a specific country, often at times of currency instability. The most common cause of capital flight is an anticipated devaluation of the home currency. Capital flight is usually a symptom rather than a cause of financial crisis. Occasionally, however, rumors of devaluation can trigger capital outflows. Not surprisingly, episodes of capital flight are most frequent when exchange rates are unstable. A loss of confidence may be caused by an excessively large foreign debt burden, large fluctuations in commodity export prices, or chronic government mismanagement of the domestic economy. Capital flight may affect the entire financial system of a country.¹³⁹

The modes of ML are endless. A lot of modes/techniques are not easily attributed to one laundering phase alone with reporting of crime, the *modus operandi* changes keeping in view the earlier detection.

2.5 Case Studies in Foreign Perspective

ML is a largely secretive and sensitive phenomenon. It is very difficult to estimate or find out how much money is actually laundered in any country or globally.¹⁴⁰ It is also very difficult to find out the exact number of launderers, how much money they launder, in which countries and sectors are included to launder money as well as the techniques or modes which are used for ML.¹⁴¹

¹³⁹ Website: < www.investorwords.com/704/capital_flight.html.> Accessed on 7 August 2014.

¹⁴⁰ Personal interview with Dr. Abhinaya Chandra Saha, professor, Department of Accounting and Information Management and Director, Institute of Business Administration (IBA), University of Rajshahi, Bangladesh at his office on 23 December 2013.

¹⁴¹ The statistics provided are taken from different articles duly acknowledged and is meant to just focus on the gravity and enormosity of the problem. It is mentionable that the researcher could not find the recent concretized statistics due to the volatile nature of the statistics related to ML.

However, a sustained effort between 1996 and 2000 by the FATF to produce such estimates failed. In fact, no direct estimates exists of how much money is transferred through the financial system, whether broadly or narrowly defined, for the purposes of converting illegal gains into a non traceable form. The US government identifies the amount of laundered money through its investigations. According to the 2002 National Money Laundering Strategy—an annual report from 1999 to 2003 by the US Treasury to Congress on anti-money laundering efforts—seizures of ML related assets in fiscal 2001 amounted to \$386 million, while the corresponding figure for forfeited assets was \$241 million.¹⁴² Considering the billions of laundered dollars believed to be out there, a few hundred million dollars annually is a negligible share of the true total. John Walker (1995)¹⁴³ was the first to make a serious attempt at quantifying ML and initial output. His model suggests that US\$2.85 trillion are laundered globally. As per an estimate of the International Monetary Fund, the aggregate size of ML in the world could be somewhere between 2-5% of the worlds Gross Domestic Product (GDP). Although, ML is impossible to measure with accuracy, it is estimated that US\$300 billion to US\$500 billion in proceeds from serious crime (not tax evasion) is laundered each year.¹⁴⁴ Though data on the size of ML is little, UK and US officials estimate that the amount of money laundered annually in the financial system worldwide was

¹⁴² Peter Reuter and Edwin M. Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (Peterson Institute of International Economics, USA, 2004). p. 9.

¹⁴³ He was a pioneer who attempted to measure money laundering worldwide, using an ad hoc equation. The Walker Model examines two different aspects of money laundering process. First, it scrutinizes money generated for laundering per country. Second, it examines flows of generated money from one country to another. Cited in Brigitte Unger, *The Scale and Impacts of Money Laundering, UK*. (Edward Elgar Publishing, UK, 2007). p. 16.

¹⁴⁴ Scott, David. “Money Laundering and International Efforts to Fight It, Public Policy of the Private Sector, Public Policy for the Private Sector,” *The World Bank* , Note No.48 (1995). Available at <<http://www.worldbank.org/html/fpd/notes/48/48scott.pdf>> Accessed on 15 February 2014.

roughly \$500 billion—some 2% of global GDP.¹⁴⁵ According to international accounting firms, India is estimated to have a parallel economy of nearly 40% of its \$600 billion Gross Domestic Product.¹⁴⁶ The United Nations Office on Drugs and Crime (UNODC) conducted a study to determine the magnitude of illicit funds generated by drug trafficking and organised crimes and to investigate to what extent these funds are laundered. The report estimates that in 2009, criminal proceeds amounted to 3.6% of global GDP, with 2.7% (or USD 1.6 trillion) being laundered. This figure is consistent with the 2-5% range previously established by the International Monetary Fund (IMF) to estimate the scale of ML. Less than 1% of global illicit financial flows is being seized and frozen in 2009.¹⁴⁷

The Supreme Court of the United States rendered two judgments in favour of defendants, narrowing the application of the federal ML statute on 2 June 2008. In a unanimous opinion written by Justice Clarence Thomas, the Court reversed *Acuna*, Mexico's Humberto Cuellar's conviction and ruled that hiding \$81,000 in cash under the floorboard of a car and driving toward Mexico is not enough to prove the driver was guilty of ML. Instead of the prosecutors must also prove the driver was travelling to Mexico for the purpose of hiding the true source of the funds. In fact, the prosecution had not made its *prima facie* case. The Court further ruled that federal prosecutors have gone too

¹⁴⁵ Quirk, Peter J. "Money Laundering: Muddying the Macroeconomy." (*Finance and Development. International Monetary Fund*, Vol.34, No.1, March 1997). p. 8. Available at <<http://www.imf.org/external/pubs/ft/fandd/1997/03/pdf/quirk.pdf>> Accessed on 15 February 2014.

¹⁴⁶ Dhandapani Alagiri (ed.), *Money Laundering: Issues and Perspectives* (ICFAI University Press, Hyderabad, India, 2006). p. 86.

¹⁴⁷ The United Nations Office on Drugs and Crime (UNODC), Research Report titled 'Estimating illicit financial flows resulting from drug trafficking and other transnational organized crime', (October, 2011). Available at <www.fatf-gafi.org/pages/faq/moneylaundering> Accessed on 15 December 2014.

far in their use of ML charges to combat drug traffickers and organized crime; that ML charges,¹⁴⁸ apply only to profits of an illegal gambling ring and cannot be used when the only evidence of a possible crime is when a courier headed to the Texas-Mexico border with \$81,000 in cash proceeds of a cannabis transaction; it cannot be proven merely by showing that the funds were concealed in a secret compartment of a Volkswagen Beetle; instead, prosecutors must show that the purpose of transporting funds in a ML case was to conceal their ownership, source or control; the secrecy must be part of a larger design to disguise the source or nature of the money.¹⁴⁹ Later in another case, in a divided decision, the Court reversed the convictions of Efrain Santos of Indiana and Benedicto Diaz for ML based on cash from an illegal lottery. In the plurality opinion, Justice Antonin Scalia wrote that the law referred to the proceeds of some form of unlawful activity; paying off gambling winners and compensating employees who collect the bets do not qualify as ML; the word ‘proceeds’ in the federal ML statute,¹⁵⁰ applies only to transactions involving criminal profits, not criminal receipts; those are expenses, and prosecutors must show that profits were used to promote the illegal activity. Congress clarified the meaning of the statute in the Fraud Enforcement and Recovery Act, 2009, defining proceeds explicitly to include both profits and gross receipts.¹⁵¹

Franklin Jurado, the Harvard-educated economist went to prison for cleaning \$36 million for Jose Santacruz-Londono, the Colombian drug Lord in

¹⁴⁸ *The Money Laundering Control Act, 1986* (USA). Sec. 18 U.S.C. 1956(a)(2)(B)(i).

¹⁴⁹ Website: < [http:// mlaundrying.wordpress.com/academic-analysis/](http://mlaundrying.wordpress.com/academic-analysis/) > Accessed on 12 December 2013.

¹⁵⁰ *The Money Laundering Control Act, 1986* (USA). Sec.18 U.S.C. 1956(a)(1)(A)(i)(h).

¹⁵¹ Website: < [http:// mlaundrying.wordpress.com/academic-analysis/](http://mlaundrying.wordpress.com/academic-analysis/) > Accessed on 12 December 2013.

1996. People with a whole lot of dirty money typically hire financial experts to handle the laundering process. The whole idea is to make it impossible for authorities to trace the dirty money while it is being cleaned.¹⁵²

2.6 Case Studies in Bangladesh Perspective

Bangladesh holds seaports and long porous borders with India and Myanmar. The regions of the golden triangle (Laos, Myanmar and Thailand) and golden crescent (Afghanistan, Iran and Pakistan) have made a key transshipment point for drugs produced.¹⁵³ In addition to drug trafficking, corruption and trafficking in persons are the principal sources of criminal proceeds for ML. Bangladesh is also vulnerable to terrorist financing flows through *hawala/hundi* systems and by cash courier. Bangladesh-based terrorist organization Jamaat-ul-Mujahideen Bangladesh (JMB) has publicly claimed to receive funding from Saudi Arabia.¹⁵⁴

The economy of Bangladesh relies heavily on remittances from expatriate Bangladeshi workers. According to the BB, central bank of Bangladesh reports that remittances through official channels have increased steadily since 2002, rising to \$11.65 billion in the year 2011 due to improved delivery time and payment procedures by commercial banks and to include value-added services, such as group life insurance. The BB, central Bank of Bangladesh stated that a larger share of remittances is now transmitted through the formal sector than

¹⁵² Ahmed Ali. "Anti-money laundering measures still ineffective." *The Daily Star*, Dhaka (29 May 2004).

¹⁵³ Almost 90 per cent of the world's illicitly-produced opiates originate in the two main production areas- golden crescent and the golden triangle. Mohammad Anisur Rahman, "Drug abuse: A threat to the nations." *The Financial Express*, Dhaka (14 September 2013).

¹⁵⁴ Money Laundering and Financial Crimes Country Database (May 2012) (United States Department of State, *Bureau for International Narcotics and Law Enforcement Affairs*, INCSR 2012, Volume 11, Country Database. p. 46. Available at <www.state.gov/documents/organization/191510.pdf> Accessed on 12 May 2014.

through *hawala/hundi*. Nevertheless, while money transfers outside official channels are illegal, widespread use of the underground *hawala/hundi* system continues and black market money exchanges remain popular because of the non-convertibility of the local currency and intense scrutiny of foreign currency transactions made through official channels. Remittances by expatriate workers comprise the vast majority of *hawala/hundi* transactions, but *hawala/hundi* is also used to avoid taxes and customs duties and is exploited by criminals as a low-risk avenue to conceal the proceeds of crime. While the *hundi* system continues to be Bangladesh's principal ML vulnerability, non-governmental organizations (NGOs), charities, and counterfeiting are areas of increasing concern, especially with regard to TF.¹⁵⁵

The Government of Bangladesh (GoB) adopted a controversial tax amnesty plan aimed at encouraging investment in the capital markets in June 2011. The amnesty could undermine Bangladesh's compliance with international AML standards (including the criminalization of money laundering, confiscation of the proceeds of crime, and cooperation between domestic competent authorities) and defeat its progress in strengthening its AML legal framework and implementation efforts. At the end of 2011, Bangladesh rescinded the problematic tax amnesty programme, replacing it with another programme that largely alleviates concerns of ML activities and related crimes.¹⁵⁶

¹⁵⁵ Website: <<http://www.apgml.org/documents/docs/17/Bangladesh%20ME2%20-%20final120809.pdf>> Accessed on 15 February 2013.

¹⁵⁶ Money Laundering and Financial Crimes Country Database (May 2012) (United States Department of State, *Bureau for International Narcotics and Law Enforcement Affairs*, INCSR 2012, Volume 11, Country Database. p. 46. Available at <www.state.gov/documents/organization/191510.pdf> Accessed on 12 May 2014.

Tarique Rahman and his business partner Giasuddin Al Mamun transferred money to the Capital Street branch of Singapore's City Bank had been extorted from different firms including Nirman Construction Ltd,¹⁵⁷ if being the lowest bidder, was primarily selected for the job to install a power plant in Tongi. In the case of *Tarique Rahman vs Govt. of Bangladesh*, Justice Md. Muzammel Hossain opines, "...The sole object of repealing and amending an Act is to get rid of certain provisions of obsolete matter and replacing the same by subsequent amendment of an Act since right of repeal being inherent in legislature alone."¹⁵⁸ In compliance with the contention, the bill not only replaces the present 'Money Laundering Prevention Act 2009,' at once with the 'Money Laundering Prevention Act 2012,' but also aims at making an 'up to the hilt' law to efface the dynamic crime of ML that poses as a thicket upon the economy cornerstone of Bangladesh.¹⁵⁹

The Destiny-2000 Ltd. started their functions after taking a registration under the Department of Cooperatives (DoC) in the Ministry of Local Government, Rural Development & Cooperatives in 2000 and now according to its website, has 42 sister concerns. In 2012, a team of NBR has audited the tax reports of the 12 entities of Destiny Group. Mr. Md. Alauddin¹⁶⁰ said 'the Destiny-2000 Ltd. has raised hundreds of crores of BDT taka from people through its cooperative window, which enjoys tax exemption.' The tax

¹⁵⁷ Unearthed the laundering of Tk 20.41 crore. But the firm was told that it would not get the job unless Tarique, elder son of BNP Chairperson Khaleda Zia, and Mamun are paid \$750,000. *Tarique Rahman vs Govt. of Bangladesh*. 63 DLR (AD) (2011). p. 18.

¹⁵⁸ *Tarique Rahman vs Govt. of Bangladesh*. 63 DLR (AD) (2011). p. 18.

¹⁵⁹ Website: <<http://www.nevisfinance.com/GFXZ/MoneyLaundering.jpg>> Accessed on 15 February 2014.

¹⁶⁰ Md. Alauddin was a member of the audit, intelligence and investigation of the NBR, Bangladesh.

regulator also scanned the accounts of the Cooperative to see if it has properly distributed profits to its members or not. The central bank investigation has found that the company is involved in banking activities—from deposit collection to lending—illegally. It has around 70 lakh members and set a target to take the number to 1 crore. The probe also found a link between the current liquidity crisis in the banking sector and the booming MLM business. As on 31 December 2011, the organisation collected nearly BDT Tk 2,000 crore in deposits and share capital from people. Of the deposit, the bulk amount is lent to its sister organisations and only a small portion to its members. However, the Destiny did not try to borrow from the banks or capital markets to meet its demand for capital.¹⁶¹

The BB and others, the regulators following a series of news reports on the issue over the last few days March-April, 2012 have moved to probe the Destiny-2000 Limited scam spotted. The DoC, which is the principal regulator of cooperative societies, has formed a high-powered committee to investigate the matter. The National Board of Revenue (NBR) and the Anti-Corruption Commission (ACC) have also moved to probe possible tax dodging and ML by the MLM Company.¹⁶²

The top sixteen officials of the Destiny 2000 Limited were accused of misappropriating money and ML of Destiny Multi-level Marketing. Of them,

¹⁶¹ *The Daily Star*, Dhaka (3 April 2012). Available at <www.thedailystar.net/newDesign/news-details.php?nid=228790> Accessed on 25 January 2014.

¹⁶² *Ibid.*

six were accused of ML case of Destiny Tree Plantation Project. The Deputy Director Mohammad Mozahar Ali Sardar and the Assistant Director Mohammad Toufiqul Islam of the Anti-Corruption Commission (ACC) filed two cases against 22 Destiny officials on 31 July 2011 with Kalabagan Police Station at Dhaka under the Money Laundering Prevention Act 2009 for misappropriating BDT Tk 3,500 crore and siphoning it. There was allegation that the accused secretly transferred BDT Tk 2,375 crore from tree plantation project and BDT Tk 1,935 crore from MLM accounts in different banks. A report published on the irregularities of Destiny-2000 Limited in various newspapers following a inquiry by the BB in 2011 where founded the proof of illegal banking by Destiny Multipurpose Co-operative Society, a sister concern of Destiny. Illegal banking by the company is creating disorder in the country's financial sector, said the BB probe report, which was sent to the finance ministry on July 2011. A Dhaka court on 02 October 2011 ordered the authorities to freeze 252 bank accounts of scandal-hit Destiny Group and Destiny 2000 Limited. The latest case of fraud by Destiny 2000 Limited at Panchagarh district came into public attention through a news item published in vernacular daily Manabzamin on 27 October 2011.¹⁶³ Just within 3 days of lodging criminal cases against Destiny 2000 Limited at country's southern district of Rajshahi (Bagmara Police Station), cheated clients of Destiny 2000 Limited at Panchagarh district (northern part of Bangladesh) have demonstrated on 25 October 2011 demanding refund of their invested money and legal action against the fraudsters at Destiny 2000 Limited. However, the

¹⁶³ *The Vernacular Daily Manabzamin*, Dhaka (27 October 2011). p. 11.

Government of Bangladesh also detected 45 Multi Level Marketing Companies, including Destiny 2000 Limited are using false/fake address and giving false information.¹⁶⁴ On 31 July 2012, the ACC sued Destiny officials on charges of siphoning off BDT Tk 3.28 billion taka (39 million US\$). The multilevel company officials allegedly transferred crores of taka from the company accounts to their personal accounts.¹⁶⁵

Sonali Bank Limited as well as Hall Mark Group of Bangladesh is creating a gigantic negative impact on the banking sector. From a certain period it has been observing a further caused by BDT Tk 35.47 billion (3,547 crore) loan scam in a branch named Ruposhi Bangla branch of the Sonali Bank Limited, Dhaka where a quite well known company named Hallmark had alone swindled BDT Tk 25.00 billion (2,500 crore) approx through local letters of credit, while T & Brothers took more than BDT Tk 6.00 billion (600 crore), Paragon Group BDT Tk 1.47 billion (147 crore) approx, Nakshi Knit about BDT Tk 670 million (67 crore), DN Sports about BDT Tk 340 million (34 crore) and Khanjahan Ali took about BDT Tk 50 million (5 crore). This is the matter of great-concern that it is unprecedented in the history of our banking sector. The borrowers are neither well-known nor well-established companies. This huge amount of money has been given to the companies by Sonali Bank Limited, in completely irregular way which has been misused by the companies.¹⁶⁶

¹⁶⁴ *The New Nation*, Dhaka (26 October 2011).

¹⁶⁵ Mahbub Alam, "Money Laundering: A Cancerous Practice Crippling Our Economy." *The Independent*, Dhaka (19 October 2012).

¹⁶⁶ *Ibid.*

ML activities and related offences were also encouraged by the act of Hallmark and Destiny 200 Limited. Some foreign shipping companies are also involved in a large scale of ML bandwagon in collaboration with their local agents, according to an investigation conducted by the BB. The report reveals that searain shipping company named Orient Overseas Container Line (OOCL) is involved in fraudulent activities that directly violate Bangladesh Bank's Foreign Exchange Regulation Act (FERA) 1947. The OOCL is Hong Kong based container shipping and logistics service company which claims to give 5% commission to their local traders Continental Traders Bangladesh Limited (CTBL). The OOCL was actually providing 2.5% commission and laundering the rest 2.5% from Bangladesh. Almost in all the cases, the mother shipping companies are providing 2.5% commission to their local agents, but the documents of the CTBL recorded 5% commission shows in the investigation report issued by the BB, central bank of Bangladesh. Even though the OOCL claims that it paid BDT Tk 13.5 crore as commission to the CTBL, the audit and tax documents indicate otherwise. According to audit and tax documents, the OOCL only paid BDT Tk 6.7 crore to CTBL and laundered the remaining amount.¹⁶⁷

¹⁶⁷ Mahbub Alam, "Money Laundering: A Cancerous Practice Crippling Our Economy." *The Independent*, Dhaka (19 October 2012).

2.7 Conclusion

ML is a big concern at national and international level. Cash transactions are predominately used for ML as they facilitate concealment of the true ownership and origin of money. The money launderers or criminals contaminate and corrupt the structure of a country at all levels by way of ML. Further the launderer adds to constant pursuit of profits and the expansion into new associations, enabling them to penetrate the legitimate economy. The launderer or criminal associations now tend to be organized like business enterprises and to follow the same tendencies as legitimate firms, specializations growth, expansion in international markets and linkage with other enterprises. The holders of capital of illegal origin are prepared to bear considerable cost in order to legalize its use.

The practice of ML is essentially based on a few defined principles of the crime which remains largely invariable, but the technological developments related to the modes of laundering money are increasing rapidly. Moreover, it is becoming more and more complicated and indirect, which makes the task of authorities prone to control ML, virtually impossible. The launderers are taking advantage of the use of internet for transferring money. It is essential for requisite authorities to ensure that the legislation related to ML is continually updated and kept abreast of the latest development related to the modes of laundering money. Preventing or combating ML activities and related crimes is a key element in promoting a strong, sound and stable financial sector of a country like Bangladesh.

Chapter Three

Proliferation of Money Laundering in Bangladesh

3.1 Introduction

The strategic geographical location, social culture, political integrity, economic condition, and the national stability of a country are important factors for proliferation of money laundering. Bangladesh holds borders with India on the west, north and north east, Myanmar on the east and Bay of Bengal on the south. In addition, the location of Bangladesh in between the golden triangle (Laos, Myanmar, Thailand) and golden crescent (Afghanistan, Iran, Pakistan) makes it further vulnerable to illegal inflow and outflow of assets or money.¹⁶⁸

The area of Bangladesh is about 150,000 square kilometers and estimated population is around 160 million. The Gross Domestic Product (GDP) of Bangladesh at constant price in billion BDT is 4093.80 and GDP per capita in BDT is 86731.00 in the year 2013-2014.¹⁶⁹ The country has significant earnings from expatriate Bangladeshis and from export of garment products, tea, leather etc.

The funds or money involved in ML activities and related offences have been increasing day by day. According to the FATF, the aggregate size of

¹⁶⁸ Details in the previous chapter 2.6.

¹⁶⁹ Bangladesh Economic Review, 2014.

global ML is between 2-5% of world economic output, or between \$590 billion and \$1.5 trillion, most of which is gained from illicit drug trafficking, corruption, fraud as well as from organised crime.¹⁷⁰ The rise of global financial market makes the process of money or fund transfer easier or possible from one place to another place as well as from one country to another country for use. At the same time, it also makes ML easier than ever. This chapter explains the term ‘proliferation of money laundering’ and also examines its nature, causes and consequences. This chapter also focuses on the sectors through which ML occurs in Bangladesh.

3.2 Proliferation of Money Laundering

ML is a serious and growing problem in Bangladesh. Practically, it is a profit generating crime and may occur anywhere in the world including Bangladesh. The process of ML is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source.¹⁷¹ The general trend of money launderer is to seek out areas in which there is a low risk of detection and under weak or ineffective AML programme. ML preventing authorities and the money launderers always changes their behaviour when trying to chase and escape ML activities. Proliferation of money laundering, what the researcher means for the purpose of this study, is rapid or sudden expansion of ML

¹⁷⁰ Mahfuzur Rahman, *Money Laundering Protirodh* (3rd ed.; Borna Binnash, Dhaka, 2010). p. 35.

¹⁷¹ World Bank, “Policy Brief Money Laundering.” Available at <www1.worldbank.org/finance/assets/images/PB9906_en.pdf> Accessed on 21 February 2014.

including the reasons or causes behind it. To understand the term ‘proliferation of money laundering’ it is required to make an evaluation of its nature, causes and consequences.

3.2.1 Nature of Proliferation of Money Laundering

There are several ways to describe the nature of ML due to its rising trends, and the varying typologies. To understand the nature of proliferation of money laundering, ML activities may be explained under two main criteria:

- i) Practical Perspective and
- ii) Legal Perspective.

3.2.1.1 Practical Perspective

ML from practical perspective constructs the acts of ML from beginning to end i.e. from placement, layering to integration.¹⁷² The common characteristic of ML is the transfer of illegal money or fund into economic systems. ML is also the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate.¹⁷³ The scope of ML may be distinguished into three elements by following the aforesaid definitions:

- i) There is a sum of money derived from specific illegal activities;

¹⁷² Rick McDonnell, “Money Laundering Methodologies and International and Regional Countermeasures” presented at the conference on Gambling, Technology and Society: Regulatory Challenges for the 21st Century (Sidney, 7-8 May 1998). p. 2. Available at <www.aic.gov.au/media.../conferences/gambling/mcdonnell.pdf> Accessed on 5 February 2014.

¹⁷³ Javier Garcia, “International Measures to Fight Money Laundering.” *Journal of Money Laundering*, Vol. 4, No. 3 (UK, 2001). p. 7.

ii) To avoid the money from being confiscated or to save the criminal from being prosecuted, the money needs to appear legal by being converted into clean money; and

iii) This may be done by putting it through a number of steps that include placement, layering, and integration. It may be assumed from the above elements that ML is the movement of illegal money for the purpose of disguising its origin and integrating it back into the formal legitimate economy. In light of the implementation process, ML takes place when funds are placed from illegal activities and then moved through financial institutions for the purpose of disguising its origins and integrating it back into the formal legitimate economy. ML is also a process of concealing, disguising, moving or using money known to be the proceeds of crime. The aim of these activities is to convert money from being illegitimate to being legitimate through the three aforementioned steps.

The principles of hiding, moving, and investing have been used in the process of ML activities and related crimes.¹⁷⁴ Initially, the money or fund is hidden from the direct association of the crime. Then it is moved through financial and non-financial institutions to other jurisdictions. Finally, it is invested into legitimate businesses so that it may be used just like any other form of legitimate capital. Another expression of ML is to get it out, cover it up, and bring it back to the legitimate economy in order to take maximum advantage of

¹⁷⁴ The United Nation's International Money Laundering Information Network (IMOLIN), (The United Nations, 2006). Available at <www.anpec.org.br/encontro2006/artigos/A06A072.pdf> Accessed on 4 March 2014.

it. ML is also used as an instrument for connecting the informal/illegal economy to the formal/legal economy.¹⁷⁵ Above all, the launderers or criminals launder the ill-gotten gains, and then, moving them into the formal or legitimate economy. This kind of conduct could also be done by means of capital flight and tax evasion in which the money is derived from legitimate sources.¹⁷⁶ The laundered money or funds may be obtained from illegal assets such as drug trafficking or corruption as well as it also obtained from legal assets such as capital flight or tax evasion.¹⁷⁷

3.2.1.2 Legal Perspective

The term ‘money laundering’ initially used as a case in the United States of America, and then evolved through the enactment of legislations, such as the Bank Secrecy Act of 1970 (USA) and the Money Laundering Control Act of 1986 (USA). This then developed into having an international scope through the adoption of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (The Vienna Convention 1988). From that period of time, the term ‘money laundering’ spread to the rest of the world through the enactment of domestic legislations and regulations. In the legal perspective, ML is understood as being formulated in a number of legal instruments such as conventions, agreements, legislations, or regulations. The different legal instruments included various elements in the definitions of ML.

¹⁷⁵ Antoinette Verhage and Paul Ponsaers, ‘Power-seeking crime? The professional thief versus the professional launderer,’ *Crime, Law and Social Change*, Vol. 51 No. 3-4, (2009). pp. 399-412.

¹⁷⁶ Kris Hinterseer, *Criminal Finance: The Political Economy of Money Laundering in a Comparative Legal Context*, (The Hague-London-New York: Kluwer Law International), 2002. p. 11. Available at <www.worldcat.org/.../criminal-finance-the-political-economy-of-money-laundering-in-a-comparative-legal-context/.../469306923> Accessed on 25 February 2014.

¹⁷⁷ *Ibid.*

These elements involve the subject of crime, the elements of criminal acts, and the types of criminal liability. The Vienna Convention 1988 elaborates the term ‘money laundering’ as:

...The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with...or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with...or from an act of participation in such an offence or offences;...the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with...or from an act of participation in such offence or offences; the possession of equipment or materials or substances...knowing that they are being or are to be used in or for the illicit cultivation, production or publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly; participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.¹⁷⁸

Then the European Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (The Strasbourg Convention 1990) defines the term ‘money laundering’ as:

... a. the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions; b. the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds; and, subject to its constitutional principles and the basic concepts of its legal system; c. the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds; d. participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.¹⁷⁹

¹⁷⁸ *The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)*. Art 3(1)(a)(b)(c).

¹⁷⁹ *The European Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (1990)*. Art 6(1)(a)(b)(c)(d).

The European Community Council Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering (1991) also defines the term ‘money laundering’ as:

...the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;- the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;- participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing indents. Knowledge, intent or purpose required as an element of the abovementioned activities may be inferred from objective factual circumstances. Money laundering shall be regarded as such even where the activities which generated the property to be laundered were carried out in the territory of another Member State or in that of a third country.¹⁸⁰

The United Nations Convention Against Transnational Organized Crime

(The Palermo Convention 2000) also elaborates the term ‘money laundering’ as:

...the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;...the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime; participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.¹⁸¹

¹⁸⁰ *The European Community Council Directive on Prevention of the Use of the Financial System for the Purpose of Money laundering (1991)*. Art 1(D).

¹⁸¹ *The United Nations Convention Against Transnational Organized Crime (2000)*. Art 6(1)(a)(b).

The scope of ML has been elaborated in these legal instruments, and the elements that construct the definitions remain relatively the same or even in identical trend. All modes of ML may be established the same *actus reus*¹⁸² including the conversion or transfer of property, the concealment or disguise of the true nature, source, location, disposition, movement, right with respect to, or ownership of property, the acquisition, possession, or the use of property, the participation in, association to or conspiracy to commit, and attempts to commit, aid and facilitate.

The essential mental element of ML offences is *mens rea*,¹⁸³ or all instruments recognize knowledge to punish a launderer or criminal. It means that the prosecutor must prove the actual knowledge of the defendant that they have known the funds were derived from a specified crime. It is very difficult to prove this kind of mental element in the stage of implementation. Realizing this problem, the Vienna Convention 1988 considered knowledge, intent, or purpose as factual circumstances. This means that the mental element of laundering offences has been extended from the subjective intent of the launderers or criminals to the objective circumstances surrounding the case. In the formulation, there has been a shift of a mental element of ML from actual knowledge to constructive knowledge. Thus, it has been assumed that the

¹⁸² *Actus reus* refers to the defendant's criminal conduct which constructs the elements of crime as formulated in a legislation. It is the essential element that has to be proved by a prosecutor before the judge passes a sentence to the defendant.

¹⁸³ *Mens rea* means a defendant's criminal responsibility which has to be proved by a prosecutor in a judicial proceeding. Generally, there are two types of criminal responsibility: subjective and objective. Subjective responsibility consists of three kinds of fault: intention, recklessness and negligence. Objective responsibility describes the fault based on the fact surrounding the case.

laundering offences might be committed while the launderers or criminals either knew or reasonably ought to have known that the proceeds concerned were derived from a specific crime.

The Vienna Convention 1988 also considered drugs-related crimes as predicate offences of ML. With the changing characters of ML offences, the subsequent international or regional agreements such as the FATF, the Strasbourg Convention 1990, the European Community Directive 1991 and the Palermo Convention 2000 considered the scope of predicate offences to all serious crimes generating significant amounts of illegal funds. Meanwhile, at a domestic level, countries have various classifications in considering the predicate offences of ML. To identify the predicate offence as ML it may be classified in three main models. These are the all crimes approach, the list approach, and the threshold approach.¹⁸⁴

The different classifications underlying the crime of ML could affect the success of implementing and enforcing AML laws. The difficulties are identified in the definition of ML that the proceeds are derived from a specified crime and in conducting international cooperation. The difficulty also arises when the prosecutor proves the relationship between the criminal proceeds and the crime underlying it. Further, the difficulty arises when the dual criminality principle should be implemented. The countries that carry out international

¹⁸⁴ Predicate offences may be described by crimes approach reference to all offences or by the list approach reference to a list of predicate offences or by threshold approach reference to a threshold linked either to a category of serious offences or to a penalty of imprisonment applicable to the predicate offences or the mixed approach reference to a combination of these approaches. Mahfuzur Rahman, *Money Laundering Protirodh* (3rd ed.; Borna Binnash, Dhaka, 2010). p. 63.

cooperation should have the same predicate offences underlying the crime of ML. The significance of this principle is that cooperation between two countries could not be carried out if one of them does not consider any crime as predicate offences. This condition may impact on the effectiveness and efficiency of international cooperation mechanisms due to the lack of dual criminality.

The subject of ML may be explained into different categories. A money launderer is the main offender who launders the money itself. Anyone who helps a criminal to launder the proceeds of his crime is also considered as a money launderer. The people may become money launderers by possessing money known to be or suspected of being criminal activity proceeds. Above all, a person who helps to create a ML scheme even if that person does not actually take part in it, such as accountants, notaries, or lawyers who recommend a tax evasion scheme is also a laundering.¹⁸⁵

Money laundering may also be explained as domestic or national crime, and international or transnational crime. As an international crime, it was initially recognized by the United Nations treaties which then asked participating states to criminalize the crime. As a transnational crime, ML is a crime that is specifically concerned with the occurrence of the criminal activities in more than one jurisdiction. Even though each country has similar or identical elements of *actus reus* and *mens rea*, they have different predicate offences underlying the crime of ML based on crimes approach, a list

¹⁸⁵ Aniedi J. Ikpang, "A Critical Analysis of the Legal Mechanisms for Combating Money Laundering in Nigeria." *African Journal of Law and Criminology*, Vol. 1, No. 1, (August, 2011). pp. 116-130. Available at <SSRN: <http://ssrn.com/abstract=1904926>> Accessed on 15 April 2014.

approach, and a threshold approach or mixed approach. This could occur because each country takes into account different characteristics regarding the crimes that potentially threaten its domestic affairs. In addition, each country also has different capabilities in proving the nexus between ML and its predicate offences. These differences lead to the problem in conducting interstate cooperation, especially when a dual criminality requirement is obligatory.

3.2.2 Causes of Proliferation of Money Laundering

The process of ML is very dynamic and ever evolving. The money launderers are inventing more and more complicated and sophisticated procedures and using new technology for laundering money. To address these emerging challenges, the global community has taken various initiatives against ML. In accordance with international initiatives, the government of Bangladesh has also acted on many fronts. It is necessary to know the causes of ML activities to prevent it. To clear the causes of ML we may discuss it in following criteria:

- i) Factors of Proliferation of Money Laundering
- ii) Reasons of Criminal Engagement in Proliferation of Money Laundering and
- iii) Causes of Increasing Money Laundering Activities and Related Crimes

3.2.2.1 Factors of Proliferation of Money Laundering

There are some factors that facilitated and sponsored to increase ML activities and related crimes.¹⁸⁶

¹⁸⁶ A.K.M. Shirajul Islam, Executive Director, BASA, “Asset Recovery (UNCAC) Chapter V: And the Position of Bangladesh,” this paper was presented at the Fourth IAACA seminar on 25-28 June 2012 in Dalian, P.R China. Available at <<http://www.yasni.com/shirajul+islam/check+people>> Accessed on 29 April 2014.

- i) The globalisation of markets and financial flows, most evident in the advent of the Internet. The money can now travel in nano seconds, and the multiple jurisdiction leaps are made easily on a daily basis.
- ii) The deregulation of financial markets has no consistency or coherence in respect of AML regulations. Simultaneously today's global market place has brought with it very few if any restrictions.
- iii) Globalisation implies global competition and increasing pressure to deliver profits. The people who control the proceeds of crime may yield great influence with legitimate businesses, which are hungry, sometimes even desperate for profits.
- iv) The underground and parallel banking system is an unofficial channel of money transfer outside the international or national legal foreign currency transfer framework. It is an efficient and clandestine way of moving money around the world to avoid taxes, customs duties and currency controls. The system does not leave any record and therefore there is no chance of auditing. In addition the lack of law enforcing agencies cannot detect any information for taking actions against these illegal transactions.
- v) The geographical, social, economic and political context as well as foreign policy of Bangladesh makes illegal transfer of money or assets vulnerable inside or outside the country. The most common offences generating substantial criminal proceeds are the main sources of ML, e.g. bribery, abuse of public office, securities fraud, embezzlement, human trafficking, extortion, and drug trafficking. The prevalent insurgencies and extremist or terrorist activities in countries around Bangladesh are the cause of arms trafficking, which in turn increases the chance of ML activities.

3.2.2.2 Reasons of Criminal Engagement in Proliferation of Money Laundering

The criminals engage in ML activities for many reasons which are discussed below:¹⁸⁷

- i) Money represents the lifeblood of the organization that engages in criminal conduct for financial gain because it covers operating expenses, replenishes inventories, purchases the services of corrupt officials to escape detection and further the interests of the illegal enterprise, and pays for an extravagant lifestyle. To spend money in these ways, criminals must make the money they derived illegally appear legitimate.
- ii) A trail of money from an offense to criminals can become incriminating evidence. Criminals must obscure or hide the source of their wealth or alternatively disguise ownership or control to ensure that the illicit proceeds are not used to prosecute them.
- iii) The proceeds from crime often become the target of investigation and seizure. To shield illegal earnings from suspicion and protect them from seizure, criminals must conceal their existence or, alternatively, make them look legitimate.
- iv) Terrorist financing is done mainly to facilitate an extremist group by providing financial support aiming to establish or circulate their ideology. Such financial assistance may be provided directly or indirectly. The amount of money may be significantly low with several in numbers.

¹⁸⁷ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance notes on prevention of money laundering and terrorist financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. pp. 3-5.

- v) Money laundering preventing authority is trying to prevent ML activities. At the same time, the money launderers seem to permanently change their behaviour to escape their activities associated with ML. Launderer uses notice changed techniques to avoid the supervision of ML preventing authority. Launderers continuously explore new routes for laundering their money.

3.2.2.3 Causes of Increasing Money Laundering Activities and Related Crimes

Money laundering activities and related crimes increase for many reasons in Bangladesh. It is important to share tax information between the countries in the era of globalization to prevent illegal money or assets transfer outside the country. The reasons of increasing ML is the absence of Memoranda of Understanding (MoU) for sharing tax information with other countries and also the absence of effective AML laws and supervision of authority beyond selected areas. Tax evasion is also another important cause of increasing ML activities. During the era of financial globalization, the banks or FIs are more interested to invest in emerging economics in searching for profits. Limited risks of exposure and more profits in a short span of time is also the cause of increasing ML activities. ML laundering activities are increasing in order to make black money appear white money. Availability of instant corporations and corporate secrecy laws—as the corporate law of certain countries enables launderers to hide behind shell companies. Launderers are taking advantages of excellent electronic communication to find out new ways of ML activities. Tight bank secrecy laws are giving opportunity to the launderers to hide their original source of illegal earnings. A government that is relatively invulnerable to outside pressures, a high degree of economic dependence on the financial services sector, and a

geographical location that facilitates business travel to and from rich neighbors contribute highly to the increase of ML. The above conditions help increase the sophistication and employment of professional people for doing the task. Corporate Social Responsibility (CSR) is the voluntary activities undertaken by a company, association, organisation, and institute, corporate body and so on to operate in an economic, social and environmentally sustainable manner. Sometimes, the voluntary activities are used in washing illegal money through hiding the source of earnings, and also by tax evasion. Many people's investment of money or wealth as a bribe to get works, jobs, and some other facilities and privileges at national and international level, is also an important cause of ML.¹⁸⁸

3.2.3 Consequences of Proliferation of Money Laundering

The consequence of proliferation of money laundering is very difficult to estimate. The effect of ML activities may be discussed in two broad heads on the basis of time frame i.e. short term effects of ML and long term effects of ML. The short term effect of ML usually happens within one or two years—and these include: losses to the victim and gains to the perpetrator of a crime; distortion of consumption and saving; distortion of investment; artificial increase in prices; unfair competition; changes in imports and exports; effect on output, income and employment; lower or higher revenues for the public sector; changes in the demand for money; increase in the volatility of interest and exchange rates; greater availability of credit; higher capital inflows; and distortion of economic statistics.¹⁸⁹

¹⁸⁸ Personal interview with Dr. Rustam Ali Ahmed, Professor, Department of Finance and Banking University of Rajshahi, Bangladesh on 22 April 2014.

¹⁸⁹ Brigitte Unger, *The Scale and Impacts of Money Laundering* (UK: Edward Elgar Publishing, 2007). p. 16

The long term effect of ML usually happens within four years and these are as follows: threatening privatization; changing in foreign direct investment; risk for the financial sector, profits or solvability, liquidity; negative reputation of the financial sector; illegal business contaminates legal business; corrupting of officials both public and private; damaging government institutions and weakening the collective ethical standards; negative effect on growth rates; undermining political institutions and corrupting democratic culture; undermining foreign policy goals; socio economic impact by increasing crime; unhealthy distributions of wealth; increases terrorism; unpredictable changes in money demand; prudential risks to the soundness of financial institutions and financial system; contamination effect on legal financial transactions; increased volatility of international capital flows due to unanticipated cross-border transfers; proliferation of underground, unregulated thriving informal market. Purpose of ML is not only to avoid detection, but also to avoid or evade tax.¹⁹⁰ ML activities and related crimes also create some trade imbalance and balance of payment problems in the economy.¹⁹¹ Besides, for explaining the consequences of ML may be discussed on the following sub headings:

- i) Financial Sectors
- ii) Social and Cultural Sectors
- iii) Political Culture
- iv) Growth of Predicate Offences and
- v) Global Effects

¹⁹⁰ Brigitte Unger, *The Scale and Impacts of Money Laundering* (UK: Edward Elgar Publishing, 2007), p. 16.

¹⁹¹ Website: <<http://usinfo.state.gov/journals/ites/0501/ijee/state1.htm>> Accessed on 15 February 2014.

3.2.3.1 Financial Sectors

Although, it is difficult to quantify the effects of ML, it is clear that ML is detrimental to the economy of a country. Particularly in developing countries, customer trust is fundamental to the growth of sound financial institutions and the perceived risk to depositors and investors from institutional fraud and corruption, is an obstacle to such trust.

- ML damages the financial institutions that are crucial to economic growth, reduces productivity in the economy's real sector by diverting resources, and encourages crime and corruption, and can distort the economy's international trade and capital flows to the detriment of long-term economic development.¹⁹²
- ML has effects on the integrity of an individual financial institution. It creates a damping impact on foreign direct investment when a country's commercial and financial sectors are apparently under the control and influence of organized crime. Bangladesh often bears the modern ML because the government is still in the process of establishing regulations for newly privatized financial sectors. It is important to prevent ML activities and related crimes for creating friendly business environment and for lasting economic development.¹⁹³

¹⁹² International Finance Investment and Commerce Bank Limited (IFIC), "Guidelines on Prevention of Money Laundering." Dhaka, Bangladesh (June 2006). Available at <<http://www.ificbank.com.bd/GUIDELINES%20ON%20PREVENTION%20OF%20MONEY%20LAUNDERING.pdf>> Accessed on 10 May 2013.

¹⁹³ Rahman, *op.cit.*, pp. 39-40.

- The integrity of the banking and financial services is heavily reliant on the perception that it functions within a framework of high legal, professional and ethical standards. A reputation for integrity is perhaps one of the most valuable assets of a financial system and institution. Therefore, on a macro level, ML poses a risk to confidence in the financial system and its institutions.¹⁹⁴
- ML has a direct impact on the Foreign Exchange Market (FOREX) in any economy. The FOREX is vulnerable due to the volume of cash involved in the trade.¹⁹⁵ A part from the above impact on capital formation, ML could lead to increase in the liability and heighten the risks for assets quality in the financial system. When this happens, it may create systemic risks for the financial services industry and consequently to the loss of confidence and credibility in the system.
- The issues facing the world's economies include errors in economic policy resulting from artificially inflated financial sectors. Massive influxes of dirty money or funds into particular areas of the economy that are desirable to money launderers create false demand, and officials act on this new demand by adjusting economic policy. When the laundering process reaches a certain point or if law-enforcement officials start to show interest, all of that money suddenly disappear without any predictable economic cause and financial sector falls apart.¹⁹⁶

¹⁹⁴ Joseph O. S. Sanusi, at the conference on Anti-Money Laundering in ECOWAS: Bringing the Anti-Money Laundering Requirement in Compliance with International Standard in Lagos on 3 June 2003. Available at <www.sachajournals.com/user/image/ikpang002.pdf> Accessed on 24 March 2014.

¹⁹⁵ Quirk, Peter, Macro- Economic Implications of Money Laundering a publication of the monetary and exchange department of the International Monetary Fund (IMF) (April 1996).

¹⁹⁶ Julia Layton, "How Money Laundering Works", How Stuff Works. Available at <<http://money.howstuffworks.com/money-laundering.htm>> Accessed on 15 February 2014.

- ML affects indigenous entrepreneurs for trade liberalization. Some problems on local scale relate to taxation and small-business competition. Laundered money is usually untaxed, meaning the rest of us ultimately have to make up the loss in tax revenue. Proceeds of drug sales and consequent ML activities are used in bringing goods to the market, and such goods are sold below cost prices in the exporting countries. Also, legitimate small businesses cannot compete with ML front businesses that can afford to sell a product for cheaper price because their primary purpose is to clean money, not to earn a profit. They have so much cash coming in that they might even sell a product or service below cost. This situation discourages domestic production due to inviting pricing of the imported products.¹⁹⁷

- Financial institutions that rely on the proceeds of crime have additional challenges in adequately managing their assets, liabilities and operations. For example, large sums of laundered money may arrive at a financial institution and then disappear suddenly, without notice, through wire transfers in response to non-market factors, such as law enforcement operations. This can result in liquidity problems that hamper the smooth transaction of banks.¹⁹⁸ Indeed, criminal activity has been associated with a number of bank failures around the globe, including the failure of the first Internet bank, the European Union Bank. Furthermore, some financial crises such as the fraud, ML and

¹⁹⁷ Joseph O. S. Sanusi, at the conference on Anti-Money Laundering in ECOWAS: Bringing the Anti-Money Laundering Requirement in Compliance with International Standard in Lagos on 3 June 2003. Available at <www.sachajournals.com/user/image/ikpang002.pdf> Accessed on 24 March 2014.

¹⁹⁸ Website: <www.academia.edu/.../MONEY_LAUNDERING_AND_ABUSE_OF_THE_FINANCIAL_SYSTEM> Accessed on 16 May 2014.

bribery scandal at Bank of Credit and Commerce International (BCCI) in 1990 which was registered in Luxembourg with head offices in Karachi and London. The Barings Bank also collapse in 1995 which was an English merchant bank based in London as a risky derivatives scheme carried out by a trader at a subsidiary unit had significant criminal or fraud components.¹⁹⁹

- Michel Camdessus has estimated that the ML is between 2-5% of world GDP or at least \$600,000 million.²⁰⁰ In some emerging market countries, these illicit proceeds manipulate government budgets, resulting in a loss of control of economic policy by governments. In fact, in some cases, the sheer magnitude of the accumulated asset base of laundered proceeds may be used to corner markets or even small economies. ML also adversely affects currencies and interest rates as launderers reinvest funds where their schemes are less likely to be detected, rather than where rates of return are higher. ML also increases the threat of monetary instability due to the misallocation of resources from artificial distortions in asset and commodity prices.²⁰¹
- ML is also a problem in the world's financial markets and offshore centers, as well as for emerging markets. The emerging markets open economies and financial sectors. Mr. Nand Kishore Singh pointed out four important dimensions which are normal processes of emerging markets. Firstly, moving towards greater current account convertibility

¹⁹⁹ Website: <en.wikipedia.org/wiki/Barings_Bank> Accessed on 15 May 2014.

²⁰⁰ Michel Camdessus, the former managing director of the International Monetary Fund. Available at <<http://usinfo.state.gov/journals/ites/0501/ijee/state1.htm>> Accessed on 15 February 2014.

²⁰¹ Website: <<http://usinfo.state.gov/journals/ites/0501/ijee/state1.htm>> Accessed on 15 February 2014.

and then embracing full account convertibility, provide a great opportunity, and a threat for ML to occur as emerging markets gradually relax their exchange control regime. Secondly, in many economies which are gradually privatizing their public monopolies, the scope of ML has been seen to be dramatically enhanced. Thirdly, emerging markets must be wary that export-fastening regimes do not provide an alibi for ML. There are many examples where emerging markets, in trying to replace explicit export subsidiary regimes with export-fastening regimes, speed up ML. Fourthly; most emerging markets reform the financial system, their financial system thus becoming increasingly deregulated. Simultaneous regular reform also takes place in capital markets. There are problems associated with reforms of financial systems, and integration of capital markets. Coupled with this are rapid technological changes, which integrate markets and faster movement of money and currency at dramatic speed.²⁰²

- Banks are vulnerable to risks from money launderers on several fronts. There is a thin line between a financial institution being suspected that it is being used to launder money and the institution becoming criminally involved with the activity. Banks that are exposed to laundering money are most certain to face costs associated with the subsequent loss of business on top of vast legal costs.²⁰³ Across the world, banks have

²⁰² Nand Kishore Singh (N. K. Singh) is a politician, economist and former Indian Administrative Service officer, in a seminar titled “Permanent Secretary for Taxation and Revenue matters, including narcotic for the Government of India,” in panel discussions held at the United Nations, New York on 10 June 1998. Available at <www.globalpolitician.com/print.asp?id=415> Accessed on 25 March 2014.

²⁰³ Website: <www.thedailystar.net/newDesign/news-details.php?nid=228790> Accessed on 3 April 2014.

become a target of ML operations and financial crime because they provide a variety of services and instruments that may be used to conceal the source of money. With their polished, articulate and disarming behaviour, money launderers attempt to make bankers lower their guard so as to achieve their objective. Though norms for record keeping, reporting, account opening and transaction monitoring are being introduced by central banks across the globe for checking the incidence of ML and the employees of banks are also being trained to recognise suspicious transactions, the predicament of the banker in the context of ML is to sift the transactions representing legitimate business and banking activity from the irregular/suspicious transactions. Launderers generally use this channel in two stages to disguise the origin of the funds first, when they place their ill gotten money into financial system to legitimize the funds and introduce these funds in the financial system and second, once these funds have entered the banking system, through a series of transactions, they distance the funds from illegal source. The banks and financial institutions through whom the dirty money is laundered become unwitting victims of this crime.²⁰⁴

- There is also another important area of risk to the financial system is the risk posed to the securities markets, most notably the derivatives markets. Owing to the complexity of some derivative products, their liquidity and the daily volume of transactions, these markets have the ability to disguise cash flows and hence are attractive to money

²⁰⁴ Mahfuzur Rahman, *Money Laundering Protirodh* (3rd ed.; Borna Binnash, Dhaka, 2010). p. 40.

launderers. However, their activities pose huge risk to these markets. Firstly, brokers used to execute orders on behalf of ML clients may be criminally liable for aiding and abetting money launderers. With regard to local relations, individuals have colluded to take correspondingly short and long positions so as to clean money debts being paid with dirty money, at the same time profits now being clean money. Owing to their capital, and collusion in positions, they have also in the past deliberately manipulated market prices. If markets are not seen to be transparent and the price system not exogenous of individual agent's actions, participants may retire from the market and thereby make the market's allocative efficiency diminish.²⁰⁵

- The other risk is owed to offshore banks, which can wash money by way of derivative markets. Owing to the fact that these banks are foreign, it is not a pre-requisite for them to abide by the same regulations as domestic investors regarding overexposure to uncovered risks; they can take on huge risk relative to their institutional size. If losses were to arise from such positions the debts may not be fully paid, as the contracts purchased may be only one step in the course of a complex laundering chain that is untraceable. Thus, it is a probable scenario for huge losses to be incurred by legitimate investors, causing damage to the derivatives markets. Hence, ML could pose a huge and worrying problem to the financial system of a country like Bangladesh.²⁰⁶

²⁰⁵ Mahfuzur Rahman, *Money Laundering Protirodh* (3rd ed.; Borna Binnash, Dhaka, 2010). pp. 40-41.

²⁰⁶ *Ibid.*, pp 41-42.

3.2.3.2 Social and Cultural Sectors

The overall development of a country depends on its social and cultural development. ML activity affects the social and cultural development of a country. The economic and political influence of criminal organizations can weaken the social fabric, collective ethical standards, and the democratic institutions of a society. This criminal influence also affects the democratic system of a country. ML generates the criminal activity to continue. The good image of a country had been badly dented by unpleasant activities of a few misguided and immoral elements that cosset in ML and criminal activities.²⁰⁷

ML activity increases the government expenditure due to enforcement of AML laws and health care expenditures for instance, for the treatment of drug addicts. Another negative effect is that ML transfers economic power from the market, government, and citizens to criminals.²⁰⁸ Furthermore, the economic power of criminal affects all elements of a society. In extreme cases, it may lead to the virtual take-over of legitimate government. Overall, ML presents the world community with a complex and dynamic challenge.

The success of ML means the criminal activity mixing with the socio-cultural end without the possibility of being traced. This success of ML encourages criminals to continue their illicit schemes because they get to spend the profit with no repercussions. This leads to more fraud and more corporate

²⁰⁷ V. E. Inim, "Money Laundering, History, Processes and Impact." This paper was presented at a seminar on 'Money Laundering' at Eko Hotel Lagos, 2000. Available at <papers.ssrn.com/sol3/Delivery.cfm?abstractid=1904926> Accessed on 20 March 2014.

²⁰⁸ Jyoti Trehan, *Crime and Money Laundering-The Indian Perspective* (Oxford University Press, India, 2004). p. 65.

embezzling,²⁰⁹ more drugs on the streets, more drug-related crime, law-enforcement resources stretched beyond their means and a general loss of morale on the part of legitimate business people who do not break the law and do not make nearly the profits that the criminals do.²¹⁰

3.2.3.3 Political Culture

The sovereignty of a country depends on its political integrity. ML activity affects the political integrity of a country. ML is also linked with the criminal activity. Organized crime may infiltrate into financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments. The infiltration and sometimes saturation of dirty money into legitimate financial sectors and national accounts may threaten economic and political stability. The illegal money or assets is used in political campaigns during elections in order to appear legal. ML thus infiltrates into the political arena and influences governance if the chosen party wins. For instance, President Ernesto Samper of Columbia was accused of funding his political campaign with about US\$ 6 million donated by the Cali Cocaine association in the 1996 elections.²¹¹

Money laundering may also undermine the democratic and economic basis of societies, resulting in a weakening of institutions and a loss of

²⁰⁹ Corporate embezzling means more workers losing their pensions when the corporation collapses. Julia Layton, "How Money Laundering Works", How Stuff Works. Website: <<http://money.howstuffworks.com/money-laundering5.htm>> Accessed on 15 February 2014.

²¹⁰ *Ibid.*

²¹¹ George Henry Millard. "Drugs and Organized Crime in Latin America." *Journal of Money Laundering* Vo. 1, No. 1 (UK, November 1997).

confidence in the rule of law.²¹² The global nature of ML requires global standards and international cooperation if we are to reduce the ability of criminals to launder their proceeds and carry out their criminal activities.

3.2.3.4 Growth of Predicate Offences

Bangladesh faces a range of serious ML issues. It is a threat to the good functioning of the financial system of Bangladesh. However, it also influences the growth of predicate offence. The organised criminal activity often made connections through hidden financial transaction records. The criminal activities will not continue without using profit earned from those activities. To continue the criminal activity needs an area to use those illegally earned fund which derived from robbery, extortion, embezzlement or fraud. The fund or earnings may be used or restored for victims of ML and related offences to continue the criminal activities.²¹³

The most common offences generating substantial criminal proceeds are bribery, abuse of public office, securities fraud, embezzlement, human trafficking, extortion, and drug trafficking.²¹⁴ The Money Laundering Prevention Act 2009 adopts a list-based approach to the range of predicate offences covered by the ML offence. The list of predicate offences is set out at

²¹² G8 Communiqué; (Birmingham, 17 May 1998). Available at <www.g7utoronto.ca/summit/1998_birmingham/finalcom> Accessed on 10 May 2013.

²¹³ Roberto Durrieu, *Rethinking Money Laundering & Financing of Terrorism in International Law*, (Buenos Aires, Argentina, March 2013). p. 24.

²¹⁴ Asia Pacific Group (APG), “Anti-Money Laundering and Combating the Financing of Terrorism Bangladesh.” Mutual Evaluation Report (8 July 2009). Available at <<http://www.apgml.org/documents/docs/17/Bangladesh%20ME2%20-%20final120809.pdf>> Accessed on 9 March 2014.

section 2(q). In Bangladesh, section 2(q) of the Money Laundering Prevention Act 2009 highlights that ‘predicate offence’ means:

“...the offences, the proceeds derived from committing those offences are laundered or attempt to be laundered and will include the following offences: i. corruption and bribery; ii. counterfeiting currency; iii. counterfeiting documents; iv. extortion; v. fraud; vi. Forgery; vii. illicit arms trafficking; viii. illicit dealing in narcotic drugs and psychotropic substances; ix. illicit dealing in stolen or other goods; x. kidnapping, illegal restraint, hostage-taking; xi. murder, grievous bodily injury; xii. woman and child trafficking; xiii. smuggling and unauthorised cross-border transfer of domestic and foreign currency; xiv. theft or robbery or dacoity, trafficking in human beings and illegal immigration; xv. dowry; xvi. any other offence which Bangladesh Bank with the approval of the government and by notification in the official gazette declares as predicate offence for the purpose of this ordinance.”

While the list contains a number of the designated categories of offences there are some significant omissions, these being: terrorism and terrorist financing, sexual exploitation, counterfeiting and piracy of products, environmental crime, and smuggling of money or funds, and piracy. The launderers take market advantage through transactions by using price sensitive information of the capital market before it becomes public and try to control or manipulate the market to gain personal advantage (Insider trading and market manipulation). But section 2(q) of the Money Laundering Prevention Act (MLPA) 2009 provides a streamlined procedure for the inclusion of further predicate offences. This is by means of a declaration of the BB, with the approval of the government and by notification in the official gazette. The MLPA does not expressly extend the ML offence to the proceeds of predicate offences which have occurred outside Bangladesh. As noted, predicate offence is defined at section 2(q) and the predicate offences are listed therein. The definition of predicate offence has not

been extended to include such conduct where it occurs in another country. It was asserted by Bangladesh authorities that this requirement had been satisfied, because the ML offences include bringing proceeds of crime to Bangladesh from abroad. It does not follow from this that the crime which generated the proceeds also occurred abroad. Most of the offences which make up the categories of predicate offences listed in section 2(q) are criminalised within the Penal Code 1860.²¹⁵ Section 4 of the Penal Code provides that: The provisions of this code apply also to any offence committed by-(1) any citizen of Bangladesh in any place without and beyond Bangladesh. It is explained in section 4 that the word offence includes every act committed outside Bangladesh which if committed in Bangladesh, would be punishable under the Penal Code 1860.²¹⁶

3.2.3.5 Global Effects

ML makes international relation between two or more countries using their officials and legal systems. It undermines free enterprise and threatens financial stability by crowding out the private sector, because legitimate businesses cannot compete with the lower prices for goods and services that businesses using laundered funds may offer.²¹⁷ There are few specific challenges posed by ML activities throughout the world. Above all, the fact that organised crime recognizes no territorial boundaries or the niceties of sovereignty poses a fundamental challenge for the global society. ML has emerged as a threat to

²¹⁵ *The Penal Code 1860* (Act No. XLV of 1860).

²¹⁶ Details in the following chapter 4.2.1.1.

²¹⁷ Alagiri, Dhandapani (Ed.), *Money Laundering: Issues and Perspectives* (Hyderabad: ICFAI University Press, India, 2006). p. iii.

global societies, facilitated by the removal of capital controls and the liberalisation of global finance. ML activity is the lifeblood of transnational criminal networks.²¹⁸

Apart from destabilising the fiscal policy and budgeting statistics of the world economic plans, ML has sustained the influence of a great number of international crimes. ML sustains the hard drug trade all over the world, much as it is responsible for the re-capitalisation of the trade, since no international crime can truly thrive without ML. It is this prospect that sustains the various international mafia groups and their criminal operations in the developing countries. Terrorists and persons engaged in the weapons trade often employ laundered money to fund their activities. Extremists, guerrillas and other aggressive groups use these weapons in uprisings against their governments, often agitating their regional surroundings.²¹⁹

The events of 11 September 2001 (9/11) led to a destabilisation of the international system, with the United States of America (USA), the global hegemonic power, embarking upon a ‘War on Terror’ and corresponding military campaigns in Afghanistan and Iraq. This created a cleavage amongst allies, and gave the instability present in the Middle East.²²⁰

Money is moving from one place to another and a real currency is exchanged for virtual currencies and moved to other identities, and then the

²¹⁸ “G7 Finance Ministers vow to hit Money Laundering.” *Toronto Star* (11 July 2000). p. A7. Available at <www.g8.utoronto.ca/governance/rudich_g8g.pdf> Accessed on 14 May 2014.

²¹⁹ Website: <www.afp.gov.au/~media/afp/pdf/m/money-laundering-02.pdf> Accessed on 15 March 2014.

²²⁰ Website: <www.globalresearch.ca/9-11...w...> Accessed on 11 March 2014.

virtual cash is redeemed for real money. Money is essential for any kind of social, cultural, political and economic development of a place. Once upon a time Antwerpen of Belgium was a busy and economically developed town and the trend of development was upward for money flows through ML activities. Now the economic condition of that town has gone downward as the trend of ML activities has almost stopped.²²¹

3.3 Proliferation of Money Laundering in Bangladesh

The economy of Bangladesh has been expanding, having grown 5-6% every year since 1996. The economic growth is partially fueled by garment exports and remittances from Bangladeshis working overseas, mainly in the Middle East and East Asia.²²² However, there are many factors hindering Bangladesh economy including inefficient state-owned enterprises, delays in exploiting natural gas resources, insufficient power supplies and slow implementation of economic reforms. In addition, nearly two-thirds of the population is employed in the agriculture sector, although more than half of the country's GDP is generated through the service sector.²²³ In view of the above, proliferation of money laundering hampers the economic growth of Bangladesh.

The main target of the money launderers is the financial sectors which accept cash and facilitate domestic and international fund transferred to hide

²²¹ Personal interview with Mr. Abdul Gani, a Bangladeshi origin businessman living in Antwerpen, Belgium since 1975 over cell phone on 5 July 2013.

²²² Website: <www.bankersacademy.com/resources/free-tutorials/288-aml-bangladesh> Accessed on 10 March 2014.

²²³ Country Profile and Demographics: National Economy. Website: <siakhenn.tripod.com/economy.h...> Accessed on 12 March 2014.

and obscure their illicit funds. The launderers also encourage the criminals and terrorists to operate and expand their criminal pursuits, in addition to fostering illegal activities such as corruption, drug trafficking, illicit trafficking and exploitation of human beings, arms trafficking, smuggling and so on.²²⁴ ML may occur through many sectors of Bangladesh i.e. banks, financial institutions, insurance companies, money changers, companies or organizations remitting or transferring money, other business organizations etc. Besides these, the stock dealer and stock broker, portfolio manager and merchant bank, security custodian, asset manager, non-profit organizations/institutions, non government organizations; non financial businesses and professions, and such other government approved organizations. Among them the following two sectors are selected for the research work:

- i) Proliferation of Money Laundering through Banks and
- ii) Proliferation of Money Laundering through Capital Market

3.3.1 Proliferation of Money Laundering through Banks

Banking sector plays an important role in the economic development of a country, especially for Bangladesh. A sound and efficient banking system is one of the most important preconditions to achieve economic development of a country. The term ‘money laundering’ is typically used to refer to any financial transaction that was meant to be kept secret, but was eventually found out. In many cases it refers to the process of concealing a source of money, which is

²²⁴ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), *op.cit.*, p. 3.

often earned by illegal means such as drug trafficking, health care fraud, and smuggling, just to name a few. Various laundering techniques may be used by individuals, groups, officials, and corporations. The goal of a ML operation is usually to hide either the source or the destination of money; in many cases it aims to make illegal transactions appear legitimate and legal.²²⁵

ML occurs in Bangladesh through banks by manipulation in the Books of Accounts, fraudulent encashment of negotiable instruments, unauthorized handling of the securities pledged or hypothecated to the banks, embezzlement, misappropriation of funds, pilferage of cash etc by the bank employees, account holders and also by third parties. This section focuses on the vulnerabilities of some products, services and structure that may pose significant risk of ML activities and related crimes in Bangladesh.²²⁶

3.3.1.1 Lease and Term Loan Finance

ML occurs in Bangladesh through lease and term loan finance. Lease finance is offered to medium size business for procuring financial fixed asset backed against industrial/ commercial/office equipment, generators, vehicles etc. Financing term may vary between 1- 4 years depending on the purchase date and also the current condition of the asset. Repayment may be made through equal monthly rentals basis. Term financing to cater to capital/fixed

²²⁵ Mohammad Jahid Iqbal, "Banking Sector's Performance in Bangladesh-An Application of Selected Camels Ratio." *Asian Institute of Technology School of Management, Thailand* (May 2012). Available at <www.pmbf.ait.asia/sites/default/files/report/report_jahidiqbal.pdf> Accessed on 25 March 2014.

²²⁶ *Ibid.*

expenditure needs such as procurement of machineries, renovation or extension of factory space etc. finance is offered usually for a term of 1- 5 years. The term loan repayment through equal monthly installments (EMI) may be secured against collateral security. A company may take lease or term loan finance from a bank or financial institution and repay the loan from illegal source, and thus bring illegal money in the formal financial system in absence of proper measures. The firm may also repay the loan amount even before maturity period if they are not asked about the sources of fund. In case of financial or capital lease, the asset purchased with FIs financing facility may be sold immediately after repayment of the loan through illegal money and sold proceeds may be shown as legal. In Bangladesh, the money launderers and terrorist financier are usually using this financial instrument for placement and layering of their ill-gotten money or funds.²²⁷

3.3.1.2 National and International Factoring

The national and international factoring is another way of ML in Bangladesh. Factoring provides advance cash against invoice or bill. It is collateral free, immediate, flexible and automatic revolving advance finance supports. In national and international factoring there is a provision that the two firms must be members of factor chain national and international or some association that may ensure the creditworthiness of the firms. In absence of this kind of private

²²⁷ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance notes on prevention of money laundering and terrorist financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 16.

sector watchdog in the local factoring, the supplier and the buyer may ally together to legalize their proceeds of crime. Without conducting any bonafide transaction the supplier may get finance from banks and banks may get repayment from buyer. Banks may be focused on getting repayment without considering the sources fund which can be taken as an opportunity by the money launderer to place their ill-gotten money or funds.²²⁸

3.3.1.3 Private Placement of Equity/ Securitization of Assets

Money laundering may occur through private placement of equity or securitization of assets in Bangladesh. Private placements of debt and equity securities offer a range of alternatives when it comes to raising capital for a company, whether for growth capital, acquisitions, shareholder liquidity, refinancing or restructuring. Securitization is the process through which an issuer creates a financial instrument by combining other financial assets and then marketing different tiers of the repackaged instruments to investors. The process may encompass any type of financial asset and promotes liquidity in the marketplace. Mortgage-backed securities are a perfect example of securitization. Using the mortgage-backed security example, individual retail investors are able to purchase portions of a mortgage as a type of bond. Without the securitization of mortgages, retail investors may not be able to afford to buy a large pool of mortgages. Some banks offer financing facilities to firms through private placement of equity and securitization of assets. Banks

²²⁸ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance notes on prevention of money laundering and terrorist financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 16.

sell those financial instruments to private investors who may take this as an opportunity to make their money legal. Later on the money launderers may sell these instruments and bring their money in the formal financial system.²²⁹

3.3.1.4 Personal Loan/Car Loan/Home Loan

The corrupt public/private officials, politically exposed persons, different professionals, business men and so on laundered their illegally earned money or assets in many ways among them by taking personal loan/car loan/home loan from banks or FIs is a common scenario in Bangladesh. Personal loan/car loan/home loan is an amount given to an individual to use for personal benefit that must be paid off at a specified time. Any person may take personal loan from banks and repay it by illegally earned money; thus the persons may launder money and bring it in the formal channel. After taking home loan or car loan, money launderers can repay those with their illegally earned money, and later by selling that home/car, they may show the proceeds as legal money.²³⁰

3.3.1.5 Small and Medium Enterprise (SME)/ Women Entrepreneur Loan

The launderer or criminals are laundering their illegally earned money or funds by taking loan in the form of Small and Medium Enterprise (SME) or Women Entrepreneur Loan in Bangladesh. Entrepreneurship is one of the indispensable ways to economic self-sufficiency around the world. Small and Medium Enterprises (SMEs) have historically been one of the steeples of the enterprise

²²⁹ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance notes on prevention of money laundering and terrorist financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulation/guideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 16.

²³⁰ *Ibid.*

landscape within economies. In the developing country like Bangladesh where well-paid employment is scarce, entrepreneurship may be the only way through which most individuals may rise above poverty. Small, medium and women entrepreneurs may take loan facilities from banks or financial institutes and repay that (in some cases before maturity) with illegally earned money or funds. They also do so only to validate their money by even not utilizing the loan. In this way the launderer may bring the illegal money in the formal financial system.²³¹

3.3.1.6 Deposit Scheme

The heart of a bank is deposit. Without sufficient deposit a bank cannot run smoothly. The launderers are taking advantage of the deposit scheme to launder their illegally earned money in Bangladesh. Deposit is a transaction involving a transfer of funds to another party for safekeeping. It is also a portion of funds that is used as security or collateral for the delivery of a good. Money is given in advance to a customer's account at a financial institution to show intention to complete the purchase of a property. Banks or financial institutes may also sell deposit products with at least a three months maturity period. At the same time, the depositor may also encash their deposit money prior to the maturity date with prior approval from Bangladesh Bank, foregoing interest income. This deposit product may be used as lucrative vehicle to place ill-gotten money in the financial system in absence of strong measures in preventing ML activities and related offences.²³²

²³¹ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance notes on prevention of money laundering and terrorist financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 16.

²³² *Ibid.*

3.3.1.7 Loan Backed Money Laundering

Loan backed ML is a common practice in Bangladesh. In the loan backed money laundering method, a launderer or criminal provides an associate with a specific amount of illegitimate money. The associate then provides a loan or mortgage back to the money laundering for the same amount with the entire necessary loan or mortgage documentation. This creates an illusion that the trafficker's funds are legitimate. The scheme is reinforced through legislatively scheduled payments made on the loan by the money launderer.²³³

3.3.1.8 Structural Vulnerabilities

The launderers are taking advantage of structural vulnerabilities of banks or financial and non-financial institutes and other related organizations in Bangladesh. Banks or FIs are yet to develop sufficient capacity to verify the identity and source of funds of their clients. The human resources do not seem sufficient and are not skilled and trained enough to trace ML and TF activities. None of the banks has AML software to monitor and report transactions of a suspicious nature of money transactions to the BFIU of BB. A skilled and powerful controlling body is required to prevent ML through the banks of Bangladesh.²³⁴

3.3.1.9 Property Dealing

The property dealing is also a mode of ML. The sale of property to integrate laundered money back into the economy is a common practice amongst

²³³ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance notes on prevention of money laundering and terrorist financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 17.

²³⁴ *Ibid.*

launderers/criminals of Bangladesh. For instance, many criminal groups use shell companies to buy property; hence proceeds from the sale would be considered legitimate.²³⁵

3.3.1.10 Front Companies and False Loans

The use of front company is a common practice to launder money in Bangladesh. The sanction of false loan in favour of the front company by the banks is also another mode of ML in Bangladesh. A subsidiary or sell company used to shield another company from liability or scrutiny. A front company may be used to protect a parent corporation or brand from negative publicity in the event of a mishap, and may also be used to conceal illegal activities. Front companies that are incorporated in countries with corporate secrecy laws, in which criminals lend themselves their own laundered proceeds in an apparently legitimate transaction.

The BB, central bank of Bangladesh has found a big fraud case at time of investigation in a branch named Ruposhi Bangla Hotel of the state-owned Sonali Bank limited disbursed loan of about 37 billion(3,547crore) taka (about 457 million U.S. dollars) to six local companies including Hallmark Group between 2010-2012 on forged documents. Among the total loan, the quite well known Hallmark Group alone swindled about 27 billion taka (333 million USD). Despondently, Hallmark is not the only company that is involved in a large scale of ML.²³⁶

²³⁵ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance notes on prevention of money laundering and terrorist financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 17.

²³⁶ Details in the previous chapter 2.6.

3.3.1.11 Foreign Bank Complicity

The foreign bank complicity is also another mode of ML in Bangladesh. ML using known foreign banks represents a higher order of sophistication and presents a very difficult target for law enforcement. The willing assistance of the foreign banks is frequently protected against law enforcement scrutiny. This is not only through criminals, but also by banking laws and regulations of other sovereign countries. The World Bank examines the flow of money from deposed dictators in North Africa, with help from the UK's Serious Fraud Office. Meanwhile, US authorities investigated HSBC, the banking group, for ML in the past year, and Barclays, the UK bank, paid a \$298m fine in 2010 as part of an agreement to settle a US investigation into sanctions violations.²³⁷

3.3.1.12 Invoices (Import/Export/Local Trading)

Invoice is an important element of import and export in international level and local trading at domestic level. The use of false invoices by import/export companies has proven to be a very effective way of integrating illicit proceeds back into the economy. This involves the overvaluation of entry documents to justify the funds later deposited in domestic banks and/or the value of funds received from exports. It is not unusual in the practice of business in Bangladesh to present a false invoice. It may be done in various ways, in price or in amount, or in quality or category of goods. Showing the price of a good, more or less than the purchased one or showing the amount of goods as far more or far less than

²³⁷ Caroline Binham, "Money laundering made difficult." *The Financial Times* (13 October 2011). Available at <www.ft.com/cms/s/.../d603cb2e-f53b-11e0-9023-00144feab49a.html> Accessed on 20 May 2014.

imported or bringing a good other than mentioned in the invoice. However, officially the invoice as a document remains clean and clear, the activities done by businessmen with the help of the concerned custom officers do not complement with the invoice.

Agriculture Ministry of Bangladesh requested the BB to inspect a case in 2011, where an importer submitted import documents to release import goods (TSP and DAP Fertilizer) within agri-subsidize programme at higher price than Fertilizer Market Bulletin (FMB) market price. Then the BFIU of BB inspected this case in two different Banks. Inspection team found that goods imported from China quoted price about \$100 above per metric ton than FMB report price. The importer imported 5100m/ton fertilizer (TSP 1100 m/ton and DAP 4000 m/ton) through over invoicing and excess payment of \$5,96,320/- was made. Inspection report was sent to the Agriculture Ministry and Foreign Exchange Policy Department by the BFIU to take appropriate action against the importer under the Foreign Exchange Regulation Act 1947.²³⁸

3.3.1.13 Working Order Financing

The use of working order is a general mode of ML in Bangladesh. Working Order (WO) financing offered by banks against WO to bridge the gap between time of processing the order and receipt of payment. WO financing may be made through term loan or short term working capital financing as required but not extending the life of the order. The launderers are using false WO to launder money.

²³⁸ Annual Report 2011-2012, Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), Dhaka.

3.3.1.14 Automated Teller Machines (ATM)

The use of ATM in money transaction is a new phenomenon in Bangladesh. Automated Teller Machines (ATM) card users are a new target of fraudsters as the use of plastic money is on the rise. According to the banking industry, around 10 lakh credit cards worth \$120 billion are active in the economy. In June 2012, a credit card scam involving over Tk 10.00 crore was detected at the United Commercial Bank Limited (UCBL). The bank identified four of its top and mid-ranking officials, who withdrew the amount from the UCBL using 21 credit cards between 2007 and 2012.²³⁹ Credit card division in charge and his supporting officials issued twenty cards to their relatives and friends. Card holders withdraw fund using their cards in ATM machines and card cheques. In every case the cards were credited showing cash deposits. But cash was not physically deposited at any branch of the bank rather credit card division in charge and his close associates fraudulently arranged to show cash deposits to those credit cards. The fraudulent activities were continued for some days and the group embezzled about Tk.10.00 crore. The activity came to the knowledge of bank's high authority when reconciliation was done properly. An investigation is under process.²⁴⁰ It was found that in almost all the cases of debit and credit card fraud, bank employees were involved, either directly or indirectly, and they provided the fraudsters with information about clients.

²³⁹ Sajjadur Rahman and Rafiul Islam, "ATM forgery unearthed," *The Daily Star*, Dhaka (25 July 2013).

²⁴⁰ Annual Report 2011-2012, Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), Dhaka.

Bangladesh is a third world country with an under developed banking system, particularly in terms of the services and customer care provided by the government run banks. Nowadays, the private banks are also trying to imitate the banking structure of the more developed countries, but this attempt is often foiled by inexpert or political government policies executed by the BB, the central bank of Bangladesh. The outcome is a banking system fostering corruption and illegal monetary activities, laundering etc. by the politically powerful and criminals, while at the same time making the attainment of services or the performance of international transactions difficult for the ordinary citizens, students studying abroad or through distance learning, general customers etc.

The common function of a bank is to collect deposit and to lend it for earning profit. All the banks have three main targets i.e. deposit, advance and profit (yearly) but at the same time these will have to be secured. It is important for the persons in authority to get promoted in service which they can achieve by fulfilling their targets. It is possible that for this reason the manager of a branch or a person in authority may assist a moneyed man who is also an influential person in the society, to find a way to regularize or legalise his/her illegitimate earning. The social reality is that the manager or a person in authority has to live his life, get promoted, manage his family as well as keep the influential persons happy in the society.

3.3.2 Proliferation of Money Laundering through Capital Market

Capital market is a market where buyers and sellers engage in trade of financial securities like bonds, stocks, etc. The buying/selling is undertaken by

participants such as individuals and institutions. Capital markets help to invest surplus funds from savers to institutions which then invest them into productive use. Generally, this market trades mostly in long-term securities. Capital market consists of primary markets and secondary markets. Primary markets deal with trade of new issues of stocks and other securities, whereas secondary market deals with the exchange of existing or previously-issued securities. Another important division in the capital market is made on the basis of the nature of security traded, i.e. stock market and bond market. Money launderers habitually targeted the various types of businesses that participate in capital market in Bangladesh. For instance, a variety of products and services to retail, usually individual and institutional investors—buying and selling stocks, bonds, and mutual fund shares through capital market. It is possible to evade funds or to launder money through using the mutual fund accounts of stock market. Some specific types of securities products that may pose significant risk of ML and TF which are discussed below.

3.3.2.1 Broker-Dealers

In the relationship era, broker-dealers relationship is an important factor in case of laundering money in Bangladesh. The brokers or dealers are active participant in the securities market. A broker or dealer acts as an agent for an investor, and enters the securities markets on behalf of an investor to buy or sell a security. In this buying and selling process, some dealers provide liquidity to the capital market by its own capacity of buying and selling. A specific vulnerability associated with broker-dealers is their reliance on another financial institution's Customer Due Diligence (CDD)/ Know Your Customer

(KYC) process. A broker-dealer might assume that, because another financial institution has opened an account for a client, so the client does not pose ML/TF risks for them. The CDD/KYC vulnerability is most problematic in relation to the funding of a securities account. If illicit assets are successfully placed at a depository institution, the broker-dealer may assume that, because the funds are from an institution which is subject to Anti-Money Laundering (AML)/ Countering/ Combating the Financing of Terrorism (CFT) rules, the client does not pose a ML/TF risk and therefore will accept cheques from that institution to fund a securities account. Once a securities account is funded, a client may engage in a number of transactions that further conceal the source of his or her illicit funds, thereby successfully layering and integrating illicit assets that were placed through a depository institution. The proper CDD/KYC process has to ensure for each institution in preventing ML in Bangladesh.²⁴¹

3.3.2.2 Asset Managers, Custodian and Portfolio Managers

The role of asset managers, custodian and portfolio managers are very important in smooth functioning in the capital market of Bangladesh. The launderers may take advantage from them. Brokers and dealers in securities may be distinguished from those securities intermediaries that are regulated as asset manager, custodian and portfolio managers. The roles of a broker and a dealer are clearly delineated from those of custodians or managers. In fact, different registration and regulatory standards may apply for them. Nonetheless, functions may be housed in the same entity by means of multiple

²⁴¹ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market Intermediaries,” Dhaka, Bangladesh (2013). p. 20.

registrations. Such advisory functions and broker-dealer functions may be conducted under the same registration. Role of the asset manager, custodian and portfolio manager is generally to advise on the composition of an investment portfolio or to hold securities of local or foreign clients or to manage the contents of investment accounts for retail or institutional clients respectively. Portfolio management typically involves the provision of financial services in a managed relationship with clients who are often of high net worthy. The value and complexity of products offered to high net worth clients, together with the international nature of the business, make the provision of wealth management services potentially attractive to money launderers, to disguise their illicit assets. The custodian, regardless of the nationality of an investor, has same potential to money launderer as portfolio management and asset management services.²⁴²

3.3.2.3 Trust, Nominee, and Omnibus Accounts

Trust, nominee and omnibus accounts are important element maintaining accounts in the capital market of Bangladesh. Trust and nominee accounts present ML vulnerabilities in the layering and integration stages. A particular risk involves if there is no requirement of collection of beneficial ownership information for individuals. As with shell companies or a front individual, a lack of beneficial ownership information regarding the individuals who benefit from the account may mask an individual's identity such that he or she would gain

²⁴² Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market Intermediaries," Dhaka, Bangladesh (2013). p. 20.

access to a financial system when such access would otherwise be restricted or forbidden. An omnibus account is an account established for an entity that is acting as an intermediary on behalf of multiple individuals or entities.²⁴³

3.3.2.4 Shell Companies

Money laundering may occur in the capital market of Bangladesh through shell or front companies. Shell or front companies are non-publicly traded corporation or limited liability company that might have no physical presence and generates little or no independent economic value. These companies are commonly organized in a way that makes their ownership and transaction information easier to conceal. On the other hand, publicly traded shell or front companies may be used for illicit purposes. ML vulnerabilities associated with shell companies are heightened when the company is privately held, such that beneficial ownership may be obscured. In particular or individuals entities in high-risk areas/ jurisdictions or conflict zones may disguise their true identities through a series of shell companies located in various jurisdictions to participate in a financial system. Otherwise, they would not be able to access. Shell or front companies may also be used to introduce illicit funds into a financial system and/or generate illicit funds through manipulative or fraudulent securities activities. In addition, a shell or front company may be established to accept payments from criminal organizations for non-existent

²⁴³ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market Intermediaries,” Dhaka, Bangladesh (2013). p. 21.

services. These payments, which appear legitimate, can be deposited into depository or brokerage accounts and used to purchase securities products that are easily transferable or redeemable.²⁴⁴

3.3.2.5 Margin Trading

The launderers are taking advantage of margin trading to launder money through capital market of Bangladesh. The characteristics of the securities industry is that the money or funds may be used to both disguise the proceeds of criminal activity and to generate further profits. The use of margin account trading involves the investor borrowing funds to carry out trading. The securities themselves are used as collateral for the loan. By influencing the timing and value of trades and leverage, a launderer may potentially use the proceeds of a scheme to generate more funds.²⁴⁵

3.3.2.6 Transfer Pricing

Money laundering may be occurred in the capital market of Bangladesh through transfer pricing. Large capitalization stocks are subject to a high degree of transparency, and subject to general market forces, generally fluctuate within an established price band. However, the market price on small capitalization stocks, which may be rarely traded, and may be subject to more extreme price movements. In addition, the price of such an illiquid stock may be substantially affected by relatively small transactions. This mechanism has been exploited

²⁴⁴ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market Intermediaries,” Dhaka, Bangladesh (2013). p. 22.

²⁴⁵ *Ibid.*

for ML purposes where block trades of illiquid stocks are transacted at a pre-agreed price between two parties. In such transactions, parties agree to the initial purchase of an illiquid security at an artificially low price with the same security being bought back some time later by the original seller or an associate at a significantly higher price.²⁴⁶

3.3.2.7 Cheques

The use of cheque is a general practice of transactions in the capital market of Bangladesh. A cheque is a document that orders a payment of money from a bank account. It is a negotiable instrument and it is as like as a bill of exchange. Cheques may be used to fund securities account with a securities intermediary. In addition, the use of cheques is not limited to those drawn from a depository account, may also be involved in issuing pay order/bank draft. Money launderers may purchase pay orders/bank draft, pay order with cash over a period of time or through a series of transactions in order to avoid verge currency reporting requirements. These cheques may then be deposited into securities accounts until a desired amount is reached and used to purchase a security, which is then sold or transferred. Another vulnerability identified is the increasing use of the securities industry in offshore jurisdictions by criminals attempting to avoid domestic seizure of their assets. The funds could also be transferred electronically to facilitate them for the same purpose. The

²⁴⁶ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market Intermediaries,” Dhaka, Bangladesh (2013). p. 23.

use of this method of disguising funds has resulted in a reduction in the effectiveness of domestic seizure/forfeiture actions, marking a change in the laundering techniques used by launderers. The launderers are taking advantage of offshore banking. It is more difficult in offshore banking system for the law enforcement organ of the government of Bangladesh to trace and seize assets held offshore.²⁴⁷

3.3.2.8 Low Priced Securities and Private Placement

A number of low priced securities are available in the capital market of Bangladesh. Besides, the transactions of private placement are common incident in the capital market of Bangladesh. Low priced securities refer to low-value equity interests in companies that are publicly traded or are about to become so. The issuers of these shares generally have legitimate business operations and revenue streams. However, some publicly traded low priced securities are really shell companies that may be used for a reverse merger. In some cases, issuers of these shares often represent with physical securities to deposit with a securities intermediary. These shares may be traded on over-the-counter (OTC) markets or on bulletin boards. Such stocks are typically bearer securities, ownership of these shares often be registered with the issuer and/or a transfer agent. The ML/TF vulnerabilities posed by these securities are two-fold. First, these types of securities are often used to generate illicit assets through market manipulation, insider trading, and fraud. Illicit actors can either use existing shares that are

²⁴⁷ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market Intermediaries,” Dhaka, Bangladesh (2013). p. 23.

already publicly traded, or start a shell company for the express purpose of engaging in those illicit activities. In addition, criminal organizations have also been known to use illicit assets generated outside the securities industry to engage in market manipulation and fraud. Second, these securities can be acquired by investing illicit assets into a company that is about to become public. Once the company goes public, the money launderer can sell his or her stake, thereby giving funds the appearance of having been derived from a legitimate securities transaction. Moreover, criminal organizations can also initially invest in a private company that they can then use as a front company for commingling illicit and legitimate assets. They can then take this company publicly through an offering in the public securities markets, thus creating what appear to be legitimate offering revenues.²⁴⁸ Alternatively, criminal organizations can acquire a publicly traded company and use it to launder illicit assets.

3.3.2.9 Short Selling

The transaction of short selling is a common scenario in the capital market of Bangladesh. In the securities industry short selling generally involves the practice of selling securities that are not actually owned by the seller, or to be borrowed for delivery. In terms of short sale, the seller does not borrow or arrange to borrow the securities in time to make delivery to the buyer within the standard settlement period. The investment strategy behind short selling is to earn profit, and to return it to the borrower through purchasing the securities

²⁴⁸ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market Intermediaries,” Dhaka, Bangladesh (2013). p. 24.

at a lower price, and selling it at high price. Sometimes, short selling may be linked to market manipulation or insider trading, which are considered as predicate offences that could be the basis for money laundering.²⁴⁹

3.3.2.10 Insider Trading

Insider trading is also an important and commonly used mode of ML in the capital market of Bangladesh. Insider trading involves situations where the person who buys and sells securities, whether a company insider or not, does so in violation of a fiduciary duty or other relationship of trust and confidence, while in possession of material, non-public information about the security. This includes situations where a person in possession of material, non-public information provides this information to someone else for trading where, depending on the circumstances, the recipient of the information can violate the rule of insider trading of the capital market of Bangladesh as well.²⁵⁰ Insider trading is unique to the securities industry and generates illicit assets. As a predicate offence for money laundering this type of misconduct is reportable as Suspicious Transaction Reports (STR) and has proven useful in assisting law enforcement and regulators prosecute such misconduct.²⁵¹ The illicit assets generated by insider trading can be laundered through the securities industry itself or through other parts of the financial sector. The most common example of laundering would be the simple transfer of illicit proceeds to a bank account.

²⁴⁹ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market Intermediaries,” Dhaka, Bangladesh (2013). p. 25.

²⁵⁰ *Securities and Exchange Ordinance 1969* (Ordinance No. XVII of 1969). Sec-19, 19A.

²⁵¹ *The Money Laundering Prevention Act 2012* (Act No.05 of 2012). Sec- 2.

3.3.2.11 Market Manipulation

The launderers are always taking advantage of market manipulation, in the capital market of Bangladesh. Market manipulation generally refers to a conduct that is intended to deceive investors by controlling or artificially affecting the market for a security. In particular, the manipulator's purpose is to drive the price of a security up or down in order to profit from price differentials. There are a number of methods that manipulators use to achieve these results. The most pervasive market manipulation method involves what is colloquially referred to as a scheme of pump-and-dump. This scheme involves touting a company's stock with false or misleading statements, often in conjunction with securities trades that raise the price of the security or make it appear as if the securities trading volume is higher than it actually is. Later on the security price is artificially raised (pumped); the security is then sold (dumped) for a profit. Often the underlying security is low priced, illiquid, and trades with little volume. Another most used method is circular trading. In this mechanism a group of syndicated persons manipulate share price by buying and then selling of share at their own from different corner at a predetermined price.²⁵²

3.3.2.12 Securities Fraud

The fraud of securities is a common incident in the capital market of Bangladesh. Securities fraud broadly refers to deceptive practices in connection with the buy and sale of securities. The securities fraud encompasses insider

²⁵² Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market Intermediaries," Dhaka, Bangladesh (2013). p. 26.

trading and market manipulation activities and poses significant ML/TF risks for the Capital Market Intermediaries (CMI). For instance, Bangladesh share market scam is ongoing stock market turmoil in the two Bangladeshi stock exchanges, Dhaka Stock Exchange (DSE) and Chittagong Stock Exchange (CSE). Millions of small investors have lost all of their investments due to the stock market crash. The crash is deemed to be a scam and exacerbating due to government failure. The stock market was in turbulence throughout much in 2009, with the trend starting to turn grim. The trend was initiated by the end of the two year political crisis and re-emergence of democracy when Awami League won the December 2008 polls, and was largely unaffected by the BDR Mutiny. The market was heavily aided by the entrance of Grameen Phone into the capital market, when the index rose by 22% over a single day on 16 November 2009. Share prices continued to fluctuate, reaching the annual high in mid-2009 before plummeting by the end of 2009, with retail investors threatening a hunger strike. It is mentionable that, Bangladesh also faced such a stock market crash in 1996. The market continued to be turbulent throughout 2010, with the DSE hitting its all-time high revenue and the largest fall in a single day since the 1996 market crash, within the space of a month. The capital markets of Bangladesh were overvalued and overheated at the end of 2010. The BB, central bank of Bangladesh had taken measures to cool the market down and control inflation by putting a leash on the liquidity. The conservative monetary measures affected the capital market, with the market falling once on 13 December, 2010 by 285 points, over 3% of the Dhaka Stock

Exchange General Index (DGEN Index) which stood at around 8,500 points. The capital markets suffered a second fall on 19 December, 2010, with the index falling a further 551 points, or about 7%. This 7% fall in the Dhaka Stock Exchange's index on a single day was the largest fall in the history of the Stock Exchange of Bangladesh, which surpassing the market crash of 1996. A number of stock market analysts, who believed the market was overvalued, opine the fall of the stock market was normal.²⁵³

The regulatory body of the Bangladesh Securities and Exchange Commission, along with the Bangladesh Bank, were taken conservative measures to pacify the fall. As a result, the market ameliorated the next day by 1.9%. Within December 2010 and January 2011, the DGEN index fell from 8,500 by 1,800 points, a total 21% fall, with masterminds of the crash making about BDT 50 billion (\$ 667 million) out of the scam. The market send into further turmoil by falling 5% on 12 June, 2011 and 4% on 11 October, 2011. The fall finally triggered small investors to go on a fast-unto-death on 16 October after forming the *Bangladesh Capital Market Investors' Council*. The market stood at around 5,500 index points in October 2011 from 8,900 only a year ago. Protests continued throughout the months, ones taking place in front of the DSE office in November 2011, with protesters sitting in throughout nights.²⁵⁴

²⁵³ Website: <http://en.wikipedia.org/wiki/2011_Bangladesh_share_market_scam.> Accessed on 20 May 2014.

²⁵⁴ *Ibid.*

The government of Bangladesh formed a four-man probe committee to investigate the stock market crash on 24 January 2011.²⁵⁵ The committee provided their findings after three months, on 7 April 2011. It identified an array of chicanery performed by some 60 influential individuals that resulted in the market crash. The committee interviewed all members of both the DSE and CSE, and consulted journalists and analysts before presenting their report. The committee found various irregularities, including the existence of omnibus accounts that allowed some market players to make exorbitant profits at the expense of the retail investors. Among the 60 identified persons, it primarily included chairman of Beximco Salman F Rahman, former DSE president Rakibur Rahman, SEC chairman Ziaul Khandaker, SEC member Mansur Alam and BNP politician Mosaddek Ali Falu. The report mentioned that pro-government business tycoons, including Salman F Rahman and Rakibur Rahman, exerted influence within the Stock Exchange Commission (SEC) by influencing the appointment of its members. The report ended with recommendations to reform the SEC drastically and asked the government to publish the names of the influential persons and to remain cognizant in countering their influences.²⁵⁶ The report resulted in the dismissal of SEC chairman Mr. Md. Ziaul Haque Khondker along with other SEC members accused. However, the Finance Minister AMA Muhit stated that the State

²⁵⁵ The four-man probe committee was formed under *the Securities and Exchange Ordinance, 1969*. Sec-21(1)(A), headed by former Bangladesh Bank Governor Ibrahim Khaled, and other three members are Dr. Tawfiq Ahmed Chowdhury, Mohammad Abdul Bari FCA and Barrister Nahid Kabir. Investigation Report, Share Market Investigation Committee, 2011, Dhaka, Bangladesh (31 March 2011).

²⁵⁶ Investigation Report, Share Market Investigation Committee, 2011, Dhaka, Bangladesh (31 March 2011).

would neither disclose the names of the accused officially nor take punitive measures without further investigation.²⁵⁷ Yet, the further investigation and their report is not come to light.

3.4 Conclusion

Money laundering is a mode of money, assets or wealth fabrication and generates crime worthwhile. The perpendicular applicability of the crime of laundering money makes it a big business in Bangladesh and in the world today. Launderers hide the source of newly acquired wealth in order to escape prosecution for the predicate offences. ML emerges as a parallel economic system, within a nation, controlled by the launderers –which menace is highly diabolical in nature. ML affects the financial system of a country to destroy and perish sound economy. It diminishes government tax revenue and therefore, indirectly harms honest taxpayers, also makes government tax collection more difficult.

Money launderers are extremely imaginative in creating new schemes to circumvent a particular government's counter measures. A national system should be flexible enough to detect and respond to new ML schemes. The AML measures often force launderers to move to parts of the economy with weak or ineffective measures to deal with the problem. Again, a national system should allow flexibility to extend countermeasures to new areas of its own economy. The government of Bangladesh needs to work with other states to ensure that the launderers cannot continue to operate merely by moving to another location in which ML is tolerated.

²⁵⁷ Website: <http://en.wikipedia.org/wiki/2011_Bangladesh_share_market_scam.> Accessed on 20 May 2014.

The money launderers outsmart the enforcing agencies and deploy a team of experts like chartered accountants, attorneys, bankers to disguise their illicit money and masquerade it as legitimate income. Bankers play the most significant role and without their connivance the operation cannot be carried out. Development of new high-tech coupled with wire transfer of funds has further aggravated the difficulties to detect the movement of slush funds. The government of Bangladesh has to keep pace with the ever changing, dynamics and innovative way of ML which keeps money launderers/criminals staying beyond the hand of law. Bangladesh is under the threat of ML activities and related crimes that has fallen the state under the observation of the regional and international AML organs.

Chapter Four

Laws Concerning Money Laundering in Bangladesh

4.1 Introduction

ML has evolved greatly at national and international level over the last few decades. ML activity distorts asset and the prices of commodity. It also leads to misallocation of resources.²⁵⁸ This realization had instigated the domestic or national and global or international community to take up initiatives to prevent ML activities and related crimes. Most of the countries of the world including Bangladesh have already introduced AML laws. The government of Bangladesh introduced the Anti-Money Laundering Act 2002 to prevent ML activities. The Act was amended in 2009 to provide a provision of stock market manipulation in Bangladesh. At the same time, the Anti Terrorism Act 2009 was also enacted. Further repealing the Money Laundering Prevention Act 2009, the Money Laundering Prevention Act 2012 was enacted to introduce a provision to make admissibility of foreign documents in the courts of Bangladesh provided by the foreign government and to back siphon off money from abroad. Similarly, the Anti Terrorism Act 2009 was also amended in 2012 and 2013 to meet international standards and to establish an effective regime in Bangladesh to deal with terror funding.

²⁵⁸ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012/guideline.pdf>> Accessed on 20 January 2014. p. 2.

This chapter concentrates on the relevant provisions of domestic AML laws as well as the transnational initiatives in preventing ML activities in Bangladesh. This chapter also focuses on the drawbacks of the existing AML laws in Bangladesh.

4.2 Relevant Provisions of Domestic Anti-Money Laundering Laws

The government of Bangladesh introduced AML laws to prevent ML activities in Bangladesh. The expression of AML laws is not used to mean any particular law or laws concerning ML activities. It encompasses the Money Laundering Prevention Act 2012, Anti Terrorism Act 2009 (amended in 2012 and 2013), Penal Code 1860, The Arms Act 1878, Code of Criminal Procedure 1898, The Customs Act 1969, Foreign Exchange Regulations Act 1947, Criminal Law (Amendment) Act 1958, Mutual Assistance in Criminal Matters Act 2012 and Mutual Legal Assistance Act 2012.

4.2.1 The Money Laundering Prevention Act 2012

The Money Laundering Prevention Act 2012 was enacted to prevent ML activities and to provide for confiscation of property derived from or involved in ML activities. The provisions of the Act may be discussed under the following sub-headings:

- i) Money Laundering as an Offence
- ii) Establishment of Bangladesh Financial Intelligent Unit (BFIU)
- iii) Supervision

- iv) Reporting Organisations or Institutes
- v) Reporting or Compliance Requirements
- vi) Penalties
- vii) Summons, Searches and Seizures
- viii) Freezing or Attachment of Property

4.2.1.1 Money Laundering as an Offence

ML is an offence when transfer of money or property involves in the following purposes:²⁵⁹

- concealing or disguising the illicit nature, source, location, ownership or control of the proceeds of crime; or
- assisting any person involved in the commission of the predicate offence to evade the legal consequences of such offence;
- smuggling money or property earned through legal or illegal means to foreign country;
- knowingly transferring or remitting the proceeds of crime to a foreign country or remitting or bringing them into Bangladesh from a foreign country with the intention of hiding or disguising its illegal source; or
- concluding or attempting to conclude financial transactions in such a manner so as to reporting requirement under this Act may be avoided;

²⁵⁹ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-2 (V).

- converting or moving or transferring property, with the intention to instigate or assist for committing a predicate offence;
- acquiring, possessing or using any property, knowing that such property is the proceeds of an offence;
- performing such activities so as to conceal or disguise the illegal source of the proceeds of crime;
- participating in, associating with, conspiring, attempting, abetting, instigating or counseling to commit any offences for instance, corruption and bribery; counterfeiting currency; counterfeiting documents; extortion; fraud; forgery; illicit arms trafficking; illicit dealing in narcotic drugs and psychotropic substances; illicit dealing in stolen and other goods; kidnapping, illegal restraint, hostage-taking; murder, grievous bodily injury; woman and child trafficking; smuggling and unauthorized cross-border transfer of domestic and foreign currency; theft or robbery or dacoity; trafficking in human beings and illegal immigration; dowry; Terrorism and Terrorist Financing; Counterfeiting and Piracy of Products; Environmental Crime; Sexual Exploitation; Taking market advantage through transactions by using price sensitive information of the capital market before it becomes public and trying to control or manipulate the market to gain personal advantage (Insider trading and market manipulation) etc.²⁶⁰

²⁶⁰ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-2 (CC).

4.2.1.2 Establishment of Bangladesh Financial Intelligent Unit (BFIU)

The Financial Intelligent Unit (FIU) was established in BB on 16 May 2007 for receiving, analyzing and disseminating Suspicious Transaction Reports (STRs),²⁶¹ TF and Cash Transaction Reports (CTRs) related to ML activities. The Anti Money Laundering Division (AMLDD) is now working as a separate unit in the BB as Bangladesh Financial Intelligence Unit (BFIU).²⁶²

4.2.1.3 Supervision

Bangladesh Bank (BB) is the core implementing and supervising agency of Bangladesh in preventing ML activities and related crimes. The BB exercises the following powers and responsibilities to prevent ML and to resist any such activities.²⁶³

- to analyze or review information related to cash transactions and suspicious transactions received from any reporting organization and to collect additional information relating thereto for the purpose of analyzing or reviewing from the reporting organizations and maintain data on the same and, as the case may be, provide with the said information to the relevant law enforcement agencies for taking necessary actions;
- to ask for any information or obtain a report from reporting organizations with regard to any transaction in which there are reasonable grounds to believe that the transaction is involved in ML or a predicate offence;

²⁶¹ Suspicious transaction means such transactions—(i) which deviates from usual transactions; (ii) of which there is ground to suspect that, (1) the property is the proceeds of an offence, (2) it is financing to any terrorist activity, a terrorist group or an individual terrorist; (iii) which is, for the purposes of this Act, any other transaction or attempt of transaction delineated in the instructions issued by Bangladesh Bank from time to time. *Ibid.*, Sec-2(z).

²⁶² *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-24.

²⁶³ *Ibid.*, Sec-23.

- to issue an order to any reporting organization to suspend or freeze transactions of any account for a period not exceeding 30 (thirty) days if there are reasonable grounds to suspect that any money or property has been deposited into the account by committing any offence; Provided that such order may be extended for additional period of a maximum of 6 (six) months by 30 (thirty) days, if it appears necessary to find out correct information relating to transactions of the account;
- to issue, from time to time, any direction necessary for the prevention of ML to the reporting organizations;
- to monitor whether the reporting organizations have properly submitted information and reports requested by the BB and whether they have duly complied with the directions issued by it, and where necessary, carry out on-site inspections of the reporting organizations to ascertain the same;
- to arrange meetings and seminars including training for the officers and staff of any organization or institution, including the reporting organizations, considered necessary for the purpose of ensuring proper implementation of this Act by the BB;
- to carry out any other functions necessary for the purposes of this AML Act.

4.2.1.4 Reporting and Compliance Organisations or Institutes

Reporting and compliance of STRs and CTRs is necessary for the instructed organizations and institutions to prevent ML activities in Bangladesh.²⁶⁴ The following organisations or institutes are the reporting and compliance

²⁶⁴ Anti Money Laundering (AML) Circular No.08, Bangladesh Bank (BB), Head Office, Dhaka (21 December 2005).

organisation in Bangladesh, based on the Money Laundering Prevention Act 2012, and the Anti Terrorism Act 2009 (amended in 2012 and 2013).

- i) Banks
- ii) Financial Institutions
- iii) Insurer
- iv) Money Changer
- v) Any company or institution which remits or transfers money or money value
- vi) Any other institution carrying out its business with the approval of the BB
- vii) Stock Dealer and Stock Broker, Portfolio Manager and Merchant Bank, Security Custodian, and Asset Manager
- viii) Non Profit Organization, Non Government Organization, and Co-operative Society
- ix) Real Estate Developer
- x) Dealer in precious metals or stones
- xi) Trust and company service provider
- xii) Lawyer, notary, other legal professional and accountant
- xiii) Any other institution which the BB may, from time to time, notify with the approval of the government of Bangladesh.²⁶⁵

4.2.1.5 Reporting or Compliance Requirements

The reporting organisations have some responsibilities in the prevention of ML activities and related crimes. The reporting organisations or institutes are to remain conscious and alert to detect unusual or suspicious transactions during day to day business. When any suspicious transaction is detected, a STR has to be submitted immediately to the General Manager, Bangladesh Financial

²⁶⁵ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-2 (w).

Intelligence Unit (BFIU) of Bangladesh Bank (BB), Head Office, Dhaka.²⁶⁶

The responsibilities of the reporting organisations or institutes in preventing ML activities are as follows:²⁶⁷

- to maintain complete and correct information with regard to the clients identity of those with whom they deal;
- to preserve all records including the records of the verification of identity of any client's Beneficial Owner (BO) account or any related account for at least 5(five) years from the date of closure or the business relationship ended;
- to provide information related to client's identity and transactions of their accounts to the BB from time to time, on its demand;
- if any suspicious transaction or attempt of such transaction is observed, to report the matter as STR to the BB immediately on its own accord.

4.2.1.6 Penalties

The BB may impose a fine on any reporting organization if violates the directions of the BB which at least taka 50 (fifty) thousand but not exceeding taka 25 (twenty five) lacs. The BB may also cancel the license or the authorization for carrying out commercial activities of the said organization or any of its branches, service centers, booths or agents, or as the case may be, shall inform the registration or licensing authority about the fact so that the relevant authority may take appropriate measures against the organization.²⁶⁸

²⁶⁶ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-25(1).

²⁶⁷ *Ibid.*, Sec-25(1)(a)(b)(c)(d).

²⁶⁸ *Ibid.*, Sec-25(2).

In addition to the above mentioned provisions there are some other provisions of penalties imposed by the BB. These are:

i) The BB may impose a fine on any reporting organization for failing to provide with the requested information timely under this section which may extend to a maximum of Taka 5 (five) lacs at the rate of Taka 10 (ten) thousand per day and if any organization is fined more than 3(three) times in 1(one) financial year, the BB may suspend the registration or license of the organization or any of its branches, service centers, booths or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so that the relevant authority may take appropriate measures against the organization.²⁶⁹

ii) The BB may also impose a fine on any reporting organization if provides with false information or statement requested under this section not less than Taka 20 (twenty) thousand but not exceeding Taka 5 (five) lacs and if any organization is fined more than 3(three) times in 1(one) financial year, the BB may suspend the registration or license of the organization or any of its branches, service centers, booths or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so that the relevant authority may take appropriate measures against the said organization.²⁷⁰

²⁶⁹ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-23(3).

²⁷⁰ *Ibid.*, Sec-23(4).

iii) The BB may impose a fine on any reporting organization for failing to comply with any instruction given by the BB under this Act which may extend to a maximum of Taka 5 (five) lacs at the rate of Taka 10 (ten) thousand per day for each of such non compliance and if any organization is fined more than 3(three) times in 1(one) financial year, the BB may suspend the registration or license of the organization or any of its branches, service centers, booths or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so that the relevant authority may take appropriate measures against the said organization.²⁷¹

iv) The BB may impose a fine on any reporting organization for failings to comply with any order for freezing or suspension of transaction issued by the BB not less than the balance held on that account but not more than twice of the balance held at the time of issuing the order.²⁷²

v) If any person or entity or reporting organization fails to pay any fine imposed by the BB, the BB may recover the fine from accounts maintained in the name of the relevant person, entity or reporting organization in any bank or financial institution or the BB, and in this regard if any amount of the fine remains unrealized, the BB may, if necessary, make an application before the court for recovery and the court may pass such order as it deems fit.²⁷³

²⁷¹ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-23(5).

²⁷² *Ibid.*, Sec-23(6).

²⁷³ *Ibid.*, Sec-23(7).

vi) If any reporting organization is imposed fine under this Act, the BB may also impose a fine not less than Taka 10 (ten) thousand but not exceeding taka 5 (five) lacs on the responsible owner, directors, officers and staff or persons employed on contractual basis of that reporting organization and, where necessary, may direct the relevant organization to take necessary administrative actions.²⁷⁴

4.2.1.7 Summons, Searches and Seizures

On the basis of written application of Anti Corruption Commission (ACC) or person authorised by the ACC the court will issue summons, searches, legal seizures of property to this effect that the property of the accused in whatever condition it may remain will be banned from sale or transfer.²⁷⁵ Special Judges may be appointed for investigation and trial of ML cases under section 3 of the Criminal Law (Amendment) Act 1958 (Act No. XL of 1958).²⁷⁶ The BB may issue order to any Bank/FI to freeze an account for 30 days where there are grounds to suspect that the transaction involves proceeds of crime.²⁷⁷

4.2.1.8 Freezing or Attachment of Property

The ACC or person authorised by the ACC will apply to the court to issue freezing or attachment order for the properties of the person who is accused under the Money Laundering Prevention Act 2012, wherever the property situated, within or outside Bangladesh. Mutual Legal Assistance Request (MLAR) through the Attorney General Office is needed if the property is outside of Bangladesh.²⁷⁸

²⁷⁴ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-23(8).

²⁷⁵ *Ibid.*, Sec-10.

²⁷⁶ *Ibid.*, Sec-9.

²⁷⁷ *Ibid.*, Sec-23.

²⁷⁸ *Ibid.*, Sec-14.

4.2.2 The Anti Terrorism Act 2009 (amended in 2012 and 2013)

The government of Bangladesh enacted the Anti Terrorism Act 2009 to prevent Terrorist Financing (TF). The Act has been amended in 2012 and 2013. The amended provisions were made for the courts to accept videos, still photographs and audio clips used in social media as evidence. The amended law also provides for capital punishment and stiff financial penalties for terrorism and subversive activities, depending upon the gravity of the crimes. The provisions of the Act may be discussed under the following sub-headings:

- i) Terrorist Financing is an Offence
- ii) Supervision
- iii) Reporting Organisations or Institutes
- iv) Reporting or Compliance Requirements
- v) Penalties

4.2.2.1 Terrorist Financing is an Offence

Terrorist financing is an offence. It can be simply defined as financial support, in any form of terrorism or of those who encourage, plan, or engage in terrorism. The offences relating to financing terrorist activities-If any person or entity knowingly provides or expresses the intention to provide money or knowingly receives money or knowingly makes arrangement for money or knowingly instigates another person or entity to provide or receive or make arrangement for money, services, material support or any other property to another person or entity and where there are reasonable grounds to believe that the same have been

used or may be used in full or partially for any purpose by a terrorist person, entity or group or organization, the related person or the said entity shall be deemed to have committed the offence of financing terrorist activities.²⁷⁹

The techniques used to launder money are essentially the same as those used to conceal the sources of, and uses for TF. Besides, the funds used to support terrorism may originate from legitimate sources or from criminal activities or both. Nonetheless, disguising the source of TF, regardless of whether the source is of legitimate or illicit origin, is important. If the source can be concealed, it remains available for future TF activities. Similarly, it is important for terrorists to conceal the use of the funds so that the financing activity goes undetected. There is a significant difference between ML and TF is that the funds involved may originate from legitimate sources as well as criminal activities. Such legitimate sources may include donations or gifts of cash or other assets to organizations, such as foundations or charities that, in turn, are utilized to support terrorist activities or terrorist organizations.

4.2.2.2 Supervision

Bangladesh Bank (BB) is the core implementing and supervising agency in preventing TF activities. BB may take necessary steps to prevent and identify any transaction carried out by any reporting agency with intent to commit an offence under the Anti Terrorism Act 2009 (including amendment of 2012 and 2013) and for this purpose it shall have the following powers and authority, namely:²⁸⁰

²⁷⁹ *The Anti Terrorism Act, 2009* (Act No. 16 of 2009). Sec-7.

²⁸⁰ *Ibid.*, Sec-15.

- to call for a report relating to any suspicious transaction from any reporting agency;
- to provide the reports received in accordance with any suspicious transaction from any reporting agency to the respective law enforcement agencies for taking necessary steps or, as the case may be, provide them to foreign law enforcement agencies upon their request or exchange information relating to the reports;
- to collect and preserve all statistics and records;
- to create and maintain a database containing the reports of all suspicious transactions;
- to analyze reports relating to suspicious transactions;
- if there are reasonable grounds to suspect that a transaction is connected to terrorist activities, to issue a written order to the respective reporting agency to suspend or freeze transactions of that relevant account for a period not exceeding 30 (thirty) days and, if it appears necessary to reveal correct information relating to transactions of the said account, such suspension or freezing order may be extended for an additional term not exceeding 6 (six) months by 30 (thirty) days at a time;
- to monitor and supervise the activities of reporting agency;
- to give directions to the reporting agencies to take preventive steps to prevent financing of terrorist activities; connected with financing of terrorist activities; and
- to provide training to officers and employees of the reporting agencies for the purpose of identification and prevention of suspicious transactions connected with financing of terrorist activities.

4.2.2.3 Reporting Organisations or Institutes

The reporting organisations or institutes are to remain conscious and alert to detect unusual/suspicious transactions during day to day business. When any suspicious transaction is detected, a STR has to be submitted immediately to the General Manager, Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), Head Office, Dhaka.²⁸¹ The responsibilities of reporting organisations or institutes to combat financing of terrorism are:

- Every reporting agency shall take necessary measures, with appropriate caution and responsibility, to prevent and identify financial transactions which are connected to any offence under this Act and if any suspicious transaction is identified, the agency shall spontaneously report it to the BB without any delay.
- The Board of Directors, or in the absence of the Board of Directors, the Chief Executive Officer, by whatever name called, of each reporting organization shall approve and issue directions regarding the duties of its officers, and shall ascertain whether the directions issued by the BB,²⁸² which are applicable to the reporting agency, have been complied with or not.²⁸³

4.2.2.4 Reporting or Compliance Requirements

- The BB, on identification of a reporting agency or its client as being involved in a suspicious transaction connected to financing of terrorist

²⁸¹ *The Anti Terrorism Act, 2009* (Act No. 16 of 2009). Sec-16(1).

²⁸² *Ibid.*, Sec-15.

²⁸³ *Ibid.*, Sec-16.

activities, shall inform the same to the relevant law enforcement agency and provide all necessary cooperation to facilitate their inquiries and investigations into the matter.

- If the trial of any offence committed in another country is pending, the BB shall take steps to seize the accounts of any person or entity pursuant to any international, regional or bilateral agreement, United Nations conventions ratified by the Government of Bangladesh or respective resolutions of the United Nations Security Council.
- The fund seized and shall be subject to disposal by the concerned court pursuant to the concerned agreements, conventions or resolutions adopted by the United Nations Security Council.²⁸⁴
- In order to dispose of the responsibilities mentioned in this Act i.e. the governmental, semi-governmental, autonomous bodies shall provide requested information or, as the case may be, spontaneously provide information to the BFIU.²⁸⁵
- The BFIU shall, on demand or, as the cases may be, spontaneously provide information relating to terrorist activities or financing of terrorist activities to FIUs of other countries.
- For the purpose of investigation relating to financing of terrorist activities, the law enforcement agencies shall have the right to access any document or file of any bank under an order from a competent court or tribunal or with the approval of the BB.²⁸⁶

²⁸⁴ *The Anti Terrorism Act, 2009* (Act No. 16 of 2009). Sec-15(3).

²⁸⁵ *Ibid.*, Sec-15(1-3).

²⁸⁶ *The Anti Terrorism Act, 2009* (Act No. 16 of 2009). Sec-15.

4.2.2.5 Penalties

The following penalties are imposed under the Anti Terrorism Act 2009 (including amendment of 2012 and 2013):

- if any reporting agency fails to comply with the directions issued by the BB²⁸⁷ or knowingly provides any wrong or false information or statement, the said reporting agency shall be liable to pay a fine determined and directed by the BB not exceeding Taka 10 (ten) lacs and the BB may suspend the registration or license with intent to stop operation of the said agency or any of its branches, service centers, booths or agents within Bangladesh or, as the case may be, shall inform the registering or licensing authority about the subject matter to take appropriate action against the agency.²⁸⁸
- if any reporting agency fails to pay or does not pay any fine imposed by the BB,²⁸⁹ the BB may recover the amount from the reporting agency by debiting its accounts maintained in any bank or FI or the BB and in case of any unrealized or unpaid amount, the BB may, if necessary, apply before the concerned court for recovery.²⁹⁰

4.2.3 Penal Code 1860

According to the Penal Code 1860 applicable in Bangladesh, the act of aiding any person in illegal transfer, conversion or concealing of any property amounts to money laundering and as such is punishable in accordance with the

²⁸⁷ *The Anti Terrorism Act, 2009* (Act No. 16 of 2009). Sec-15.

²⁸⁸ *Ibid.*, Sec-16(3).

²⁸⁹ *Ibid.*, Sec-16(3).

²⁹⁰ *Ibid.*, Sec-16(4).

Money Laundering Prevention Act 2012.²⁹¹ Moreover, the Penal Code makes dishonest or fraudulent removal or concealment of property, dishonestly received or retained stolen property and any assistance in concealing the stolen property a crime. Most of the offences which make up the categories of predicate offences are criminalised within the Penal Code 1860. In addition the section 4 of the Penal Code 1860 also provides that “the provisions of this code apply also to any offence committed by (1) any citizen of Bangladesh in any place without and beyond Bangladesh.” It is explained in section 4 that the word ‘offence’ includes every act committed outside Bangladesh which if committed in Bangladesh, would be punishable under the Penal Code.²⁹²

4.2.4 The Arms Act 1878

Trafficking of arms is a mode of ML which is controlled and prosecuted by the Arms Act 1878. The government of Bangladesh also prohibits or restricts the bringing into or taking out of Bangladesh of any goods of specified description by air, sea or land, by notification in the official Gazette from time to time.²⁹³ The goods which are specified to prohibits or restricts to bring into and taking out of Bangladesh, unless there is something repugnant in the subject or context defined under the Arms Act 1878:²⁹⁴

- “cannon” includes all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same;

²⁹¹ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-2(CC).

²⁹² *Penal Code 1860* (Act No. XLV of 1860). Sec-4.

²⁹³ *The Customs Act, 1969*(Act No. IV of 1969). Sec-16.

²⁹⁴ *The Arms Act, 1878* (Act No. XI of 1878). Sec-4.

- “arms” includes fire-arms, bayonets, swords, daggers, spears, spearheads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms;
- “ammunition” includes all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gunflint, gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpeter;
- “military stores,” means any military stores to which the government of Bangladesh may apply any section of the Arms Act 1878, and to apply any part from time to time, by notification in the official Gazette, specially extend such section in such part, and includes all lead, sulphur, saltpeter and other material to which the government may extent such section from time to time; and
- “license” means a license granted under the Arms Act 1878, and “licensed” means holding such license.

4.2.5 The Code of Criminal Procedure (CrPC) 1898

The Code of Criminal Procedure (CrPC) 1898 (Act No. V of 1898) containing a general provision for forfeiture of property upon conclusion of an inquiry or investigation under section 517(1) is as follows:

“When an inquiry of a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.”

It is clear from the terms of section 517 that both proceeds and instruments of crime can be forfeited, as well as property corresponding value. A forfeiture order pursuant to section 517 of the CrPC can apply to property held in the names of third parties, as well as to the indirect proceeds of crime. Provisional measures include freezing and or seizing. The CrPC confers a power upon police officers to seize property pursuant to section 98. However, the context indicates that the power is restricted to seizure of physical objects. The CrPC does not contain any provisions for freezing of property. Section 517(4) of CrPC enables a person to contain entitlement to property which is subject to forfeiture.

4.2.6 Criminal Law (Amendment) Act 1958

There is no provision that the burden of proof lies with the accused, in the Money Laundering Prevention Act 2012. Collecting evidence of corroborative elements with predicate offences is important to prosecute. When any person is charged, the fact that such person or any other person through him or on his behalf, is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that such person has, on or about the time of offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved, and may be taken into consideration as a relevant fact in deciding whether he is guilty of the particular offence with which he is charged.²⁹⁵

²⁹⁵ *The Criminal Law (Amendment) Act, 1958* (Act No. XL of 1958). Sec-7.

4.2.7 The Customs Act 1969

The launderers are laundering their earned money in many ways among them the bulk cash smuggling is one. The Customs Act 1969 plays an effective role in preventing bulk cash smuggling. The Act specified to restrict the following goods in bringing in, whether by air or land or sea, into Bangladesh: i) counterfeit coin; ii) forged or counterfeit currency notes and any other counterfeit product; iii) any obscene book, pamphlet, paper, drawing, painting, representation, figure, photograph, film or article, video or audio recording, CDs or recording on any other media; iv) goods having applied thereto a counterfeit trade mark or a false trade description; v) goods made or produced outside Bangladesh and having applied thereto any name or trade mark, being or purporting to be the name or trade mark of any manufacturer, dealer or trader in Bangladesh unless- the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place outside Bangladesh; and the country in which that place is situated is in that indication shown in letters as large and conspicuous as any letter in the name or trade mark, and in the same language and character as the name or trade mark; vi) piece-goods manufactured outside Bangladesh (such as are ordinarily sold by length or by the piece), unless the real length thereof in standard metres or other measurement for the time being applying in Bangladesh has been conspicuously stamped on each piece in Arabic numerals; vii) goods made or produced outside Bangladesh and intended for sale, and having applied thereto, a design in which copyright exists and in respect of the class to which the goods belong and any fraudulent or obvious imitation of such design except when the

application of such design has been made with the license or written consent of the registered proprietor of the design; and viii) goods or items produced outside Bangladesh involving infringement of copyright or infringement of layout design of integrated circuit that are intended for sale or use for commercial purposes within the territory of Bangladesh.²⁹⁶ Except this provisions, the government of Bangladesh also prohibits or restricts the bringing into or taking out of Bangladesh of any goods of specified description by air, sea or land, from time to time, by notification in the official Gazette.²⁹⁷

4.2.8 The Foreign Exchange Regulation Act 1947

The government of Bangladesh controls import and export of certain currency under the Foreign Exchange Regulation Act 1947. The government also prohibits or restricts import and export by notification in the official Gazette, subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the BB and on payment of the prescribed fee, if any, bring or send into Bangladesh any gold or silver or any currency notes or bank notes or coin whether Bangladesh or foreign.²⁹⁸ Besides, no person shall, except with the general or special permission of the BB or the written permission of a person authorised in this behalf by the BB, take or send out of Bangladesh any gold, jewellery or precious stones, or Bangladesh currency notes, bank notes or coin or foreign exchange.²⁹⁹

²⁹⁶ *The Customs Act, 1969*(Act No. IV of 1969). Sec-15.

²⁹⁷ *Ibid.*, Sec-16.

²⁹⁸ *The Foreign Exchange Regulation Act, 1947* (Act No. VII of 1947). Sec- 8(1).

²⁹⁹ *Ibid.*, Sec- 8(II).

4.2.9 Mutual Legal Assistance on Criminal Matters Act 2012

The government of Bangladesh has enacted Mutual Legal Assistance on Criminal Matters Act 2012 to enhance international cooperation in preventing ML activities and related offences. In the process of responding to international concern, the Government of Bangladesh has formed a national coordination committee in July 2009 to make policies and directive on anti money laundering and combat financing of terrorism. The committee was also charged with improving the campaign against extremism through exchanges between law enforcement and intelligence agencies. The government of Bangladesh has formed a central and several regional taskforces on 27 January 2002 to combat ML activities and *Hundi* in Bangladesh.

In 2010, the government formulated a strong anti militancy National Education Policy, which highlights the need for reforming the Madrassa curriculum. The government also introduced anti extremism chapters in academic text books. Additionally, the Ministry of Education has been organizing awareness programmes against terrorism in different schools and colleges. The government also formulated ‘National Counter Terrorism Strategy’ in 2011. In August 2011, Bangladesh acceded to the Palermo Convention against Transnational Organised Crimes.

The BFIU of the BB has taken effective steps to curb terrorism financing. The BB has already issued a circular to all state owned and private commercial banks regarding the procedure for handling ML and related

matters. It is learnt from the BB that so far it was possible to conclude agreements for mutual legal assistance with thirteen countries only. We have to go a long way ahead in this regard. Bangladesh also has to find its way for tapping benefit from all international agencies which are helpful for recovery of assets. It requires competent expertise and resources. International cooperation in line with the spirit of United Nations Convention Against Corruption (UNCAC) is very much required for the purpose. In short, while the focus of AML remains with banking, insurance, securities, real estate, prize-winning and casino sectors, the law presents more general provisions and new detailed requirements on addressing ML. However, the remedies and sanctions are not yet addressed with adequate measures and the enforceability of many provisions is still questionable.

4.2.10 The Mutual Legal Assistance Act 2012

ML and Terrorism is a global phenomenon. Neither is one country responsible for it, nor is any one country obligated to remove it single handedly. It is a collective responsibility for which every country must play its role collectively. Bangladesh is trying its best to contribute to world peace by taking a strong stance on local, regional and international terrorism. The government of Bangladesh enacted the Mutual Legal Assistance Act 2012 which provides a legal framework for inter-country cooperation in carrying out enquiries, prosecutions and trial of criminal activities. This law empowers the government of Bangladesh to freeze properties of criminals and terrorists and their equipment used in criminal activities in line with the request of a foreign

country. Bangladesh and India signed an extradition treaty for disrupting the regional connections and networks among terrorist outfits in South Asia on 28 January 2013. Additionally, Bangladesh and India have agreed to implement a Coordinated Border Management Plan (CBMP) and has agreed to increase the number of joint patrolling with a view to curbing criminal activities, including terrorism, along the long and porous border.

Bangladesh signed an agreement with the USA on 22 October 2013, which aims to enhance counterterrorism cooperation between the two countries in terms of capacity building, information sharing, and ensuring increased exchanges between law enforcement agencies.³⁰⁰ The South Asian Association for Regional Cooperation (SAARC) member nations may play effective role to work together to prevent and fight regional terrorism. A regional framework to fight terrorism is on the cards. Further, Bangladesh received full membership of the Conference on Interaction and Confidence Building Measures in Asia (CICA) on 20 May 2014.³⁰¹ The CICA pursues multilateral cooperation in the fields of peace, security and stability in Asia.

4.3 Transnational Steps to Control Money Laundering

ML is a global phenomenon. It is very difficult to prevent ML activities for a country singly due to its domestic and global character. The government of Bangladesh acted with regional and international organizations to prevent ML

³⁰⁰ Website: <www.cageuk.org/.../rahman's-arrest-shines-light-uk-complicity-bangladesh-reign-terror-0 -> Accessed on 17 March 2015.

³⁰¹ Website:<en.wikipedia.org/.../Conference_on_Interaction_and_Confidence-Building_Measures_in_Asia-> Accessed on 17 March 2015.

activities in Bangladesh. The steps of regional and international organizations in preventing ML activities are correlated with the domestic AML laws of Bangladesh. In the era of globalization, the integration of the world's financial transactions is increasing with the implementation of new technologies. The barriers to the free movement of capital have been reduced for international free trade agreement. The money launderers are taking advantages of this prospect to hide their ill-gotten gains. They are able to quickly move their criminally derived cash proceeds between national jurisdiction, complicating the task to facing and confiscating these assets. Now a large number of states are concerned about the issue and they already have introduced laws and regulations to prevent ML. The action of the international level to combat ML begins in 1988 with two important initiatives, the United Nations Convention against Illicit Traffic in Narcotics, Drugs and Psychotropic Substances and the Basel Committee on Banking Regulations and Supervisory Practices. The following international organizations are also playing effective role in preventing ML activities in Bangladesh:

- i) The United Nations,
- ii) The Basel Committee on Banking Supervision (BCBS)
- iii) The Financial Action Task Force (FATF)
- iv) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, and
- v) Other Organizations

4.3.1 The United Nations

The United Nations (UN) is an international organization founded in 1945 with the broadest range of membership (193 members from all across the world up to 2011).³⁰² The UN actively operates a global programme against ML and terrorist activities- part of the UN Office of Drugs and Crime (UNODC). The UN has adopted international treaties or conventions to prevent ML activities that obligate the ratifying countries to reflect those treaties or conventions in their local laws. In certain cases, the United Nations Security Council has the authority to bind all member countries through a Security Council Resolution, regardless of other actions on the part of an individual country. The following conventions are playing effective roles to prevent ML activities in Bangladesh as well as worldwide:

- i) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention of 1988);
- ii) The United Nations Convention Against Transnational Organized Crime (the Palermo Convention of 2000);
- iii) International Convention for the Suppression of the Financing of Terrorism (1999); and
- iv) The Global Programme against Money Laundering (GPML) (1997).

4.3.1.1 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention of 1988) calls for prevention of

³⁰² Website: <en.wikipedia.org/wiki/United_Nations -> Accessed on 17 March 2015.

laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from illicit traffic in narcotic, drugs and psychotropic substances.³⁰³ This UN Convention was one of the historic conventions in as much as the parties to the convention recognized the links between illicit drug traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of states and that illicit drug trafficking is an international criminal activity that generates large profit and wealth, enabling transnational, criminal organizations to penetrate, contaminate and corrupt the structures of government, society at all levels. Bangladesh is a member state of this convention. The government of Bangladesh enacted AML laws and included the provisions of illicit traffic in narcotic, drugs and psychotropic substances as a criminal and punishable offence. Based on the convention many other countries have framed their national legislations. Council of Europe Convention on laundering is motivated by this convention as well as this convention gave a framework for FATF to work.

4.3.1.2 United Nations Convention Against Transnational Organized Crime (UNTOC)

The United Nations Convention Against Transnational Organized Crime (the Palermo Convention of 2000), named after the city in which it was signed as Palermo Convention in order to fight against internationally organized crimes.

³⁰³ The Convention was adopted by the United Nations Conference for the adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, held at Vienna from 25 November to 20 December 1988. The Convention entered into force on 11 November 1990. As of June 2014; there were 189 parties to the convention. Available at <<http://treaties.un.org/pages/ViewDetails.aspx?>> Accessed on 10 May 2014.

This convention has come into force from 29 September 2003, having been signed by 147 countries (as of August 2014). Bangladesh is a member of this convention and ratified it on 13 July 2011.³⁰⁴ The Palermo Convention specifically obligates each ratifying country to

- criminalize ML and include all serious crimes as predicate offenses, whether committed in or outside of the country, and permit the required criminal knowledge or intent to be inferred from objective facts;
- establish regulatory regimes to deter and detect all forms of ML, including customer identification, record-keeping and reporting of suspicious transactions;
- authorize the cooperation and exchange of information among administrative, regulatory, law enforcement and other authorities, both domestically and internationally, and consider the establishment of a financial intelligence unit to collect, analyze and disseminate information; and
- promote international cooperation.

4.3.1.3 International Convention for the Suppression of the Financing of Terrorism

The financing of terrorism was an international concern prior to the attacks on the United States on 11 September 2001. In response to this concern, the UN adopted the International Convention for the Suppression of the Financing of Terrorism (1999). The convention came into force on 10 April 2002, with 132

³⁰⁴ Website: <en.wikipedia.org/wiki/Vienna_Convention_on_Diplomatic_Relations> Accessed on 22 August 2014.

countries signing the convention and 186 countries ratifying it including Bangladesh (as of August 2013).³⁰⁵ The convention requires ratifying states to criminalize terrorism, terrorist organizations and terrorist acts. Under this convention, it is unlawful for any person to provide or collect funds with the (1) intent that the funds be used for, or (2) knowledge that the funds be used to, carry out any of the acts of terrorism defined in the other specified conventions that are annexed to this convention.

4.3.1.4 The Global Programme against Money Laundering (GPML)

The Global Programme against Money Laundering (GPML) was established in 1997 in response to the mandate given to UNODC by the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The GPML mandate was strengthened by United Nations General Assembly Special Session (UNGASS) in 1998. UN Security Council Resolutions: 1267(1999), 1373(2001), 1544(2004), 1566(2004) and 1624 (2005) call on UN Members states to combat terrorism, including financing of terrorism. GPML has capacities and a special mandate to assist UN member states in ratifying and implementing the international standards related to ML and financing of terrorism.³⁰⁶ The GPML is the key instrument of the United Nations Office of Drug Control and Crime Prevention in this task. Through the GPML, the United Nations helps member states to introduce legislation against ML and to

³⁰⁵ Website: <en.wikipedia.org/wiki/Terrorist_Financing_Convention> Accessed on 22 August 2014.

³⁰⁶ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012/guideline.pdf>> Accessed on 20 January 2014. p. 9.

assist them in detecting, seizing and confiscating illicit proceeds, as required under UN related instruments and worldwide accepted standards by providing relevant and appropriate technical assistance upon request from States. The programme encourages AML policy development, monitors and analyses the problems and responses, raises public awareness about ML and acts as a coordinator of joint AML initiatives by the United Nations with other international organizations. Three further conventions have been adopted or specified provisions for ML and other related crimes where Bangladesh is a member state:

- i) International Convention for the Suppression of the Financing of Terrorism (1999);
- ii) United Nations Convention against Transnational Organized Crime (2000); and
- iii) United Nations Convention against Corruption (2003).

4.3.2 Basel Committee on Banking Supervision (BCBS)

The Basel Committee on Banking Supervision (BCBS) is a committee on banking supervisory authorities that was established by the central bank governors of the group of ten countries i.e. Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom and United States in 1774.³⁰⁷ It provides a forum for regular cooperation on banking supervisory matters. The Committee also frames guidelines and standards in different areas-some of the better known among them are the

³⁰⁷ Website: <en.wikipedia.org/wiki/Basel_Committee_on_Banking_Supervision> Accessed on 22 August 2014.

international standards on capital adequacy, the core principles for effective banking supervision and the settlement on cross-border banking supervision. The purpose of the BCBS is to encourage convergence toward common approaches and standards. The committee is not a classical multilateral organisation in part because it has no founding treaty. The BCBS does not issue binding regulation; rather, it functions as an informal forum in which policy solutions and standards are developed.

Bangladesh is a member of financial stability board of the BCBS. Individual countries are represented by their central banks, or by the relevant authorities with formal responsibility for prudential supervision of banking where that authority is not the central bank. The committee has no formal international supervisory authority or force of law. Rather, it formulates broad supervisory standards and guidelines and recommends statements of best practices on a wide range of bank/financial institution supervisory issues. These standards and guidelines are adopted with the expectation that the appropriate authorities within each country will take all necessary steps to implement them through detailed measures, statutory, regulatory or otherwise, that best suit that country's national system. The BCBS provides a forum for regular cooperation on banking supervisory matters. Its objective is to enhance understanding of key supervisory issues and improve the quality of banking supervision worldwide.³⁰⁸

The Basel statement of principles on the prevention of criminal use of banking system was significant breakthrough on the financial front to have

³⁰⁸ Website: <www.bis.org/bcbs/index.htm> Accessed on 10 May 2014.

controlling mechanism for ML on an international plane.³⁰⁹ The statement of principles not only restrict itself to drug related ML but also extends to all aspects of laundering through the banking system, i.e. the deposit, transfer and/or concealment of money derived from illicit activities whether robbery, terrorism, fraud or drugs. It seeks to deny the banking system to those involved in ML by the application of four basic principles:

- i) Know Your Customer (KYC)–Bank management mandates to detect fake identity of their clients and to determine their customer’s true identity, and have effective procedures for verifying the bonafides of a new customer;
- ii) Compliance with laws–Bank management should ensure high ethical standards in complying with laws and regulation and keep a vigil not to provide services when any ML activity is suspected;
- iii) Corporation with law enforcement agencies to prevent ML activities and related crimes; and
- iv) Policies and procedures to adhere to the statement to determine ML activities and related crimes.

4.3.3 The Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) is an inter-governmental organisation founded by G7 countries (Canada, France, Germany, Italy, Japan, and United Kingdom) created in 1989. The present members of FATF are 36. The 36 members of FATF are at the core of global efforts to combat ML and TF. Also 27

³⁰⁹ Website: < [http:// www bis.org/publ/bc.bsel137pdf](http://www.bis.org/publ/bc.bsel137pdf)> Accessed on 10 May 2014.

international and regional organizations which are associate members or observers of the FATF are participating in its work.³¹⁰ The purpose of the FATF is to develop and promote the national and international policies to combat ML and TF.

The FATF provides a complete set of counter measures against ML covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation. The FATF set out the principles according to their particular circumstances and constitutional frameworks. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating ML, TF and other related threats to the integrity of the international financial system. The FATF is therefore a policy making body which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.³¹¹

The FATF has developed a series of recommendations that are recognised as the international standard for combating of ML and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a co-ordinated response to these threats to the integrity of the financial system and help ensure a level playing field. First issued in 1990, the FATF Recommendations were revised in 1996, 2001, and 2003 and most recently in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application.

³¹⁰ Website: <http://www.fatf-gafi.org/document/5/0,3343,en_32236869_34310917_1_1_1_1,00.html> Accessed on 12 May 2014.

³¹¹ Website: <<http://www.fatf-gafi.org>> Accessed on 10 May 2014.

The FATF monitors the progress of its members in implementing necessary measures, reviews ML and TF techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.

4.3.4 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, popularly known as Strasbourg Convention, it was intended to extend the provisions on international cooperation against the activities of international organized criminality in general beyond the area of drug trafficking.³¹² The aim of this convention is to facilitate international co-operation and mutual assistance in investigating crime and tracking down, seizing and confiscating the proceeds thereof. The convention is also intended to assist states in attaining a similar degree of efficiency even in the absence of full legislative harmony. Parties undertake in particular: to criminalise the laundering of the proceeds of crime; to confiscate instrumentalities and proceeds (or property the value of which corresponds to such proceeds). For the purposes of international co-operation, the convention provides for: forms of investigative assistance for example, assistance in procuring evidence, transfer of information to another country without a request, adoption of common investigative

³¹² Website: <<http://conventions.coe.int/treaty/en/treaties/Html/141.htm>> Accessed on 10 May 2014.

techniques, lifting of bank secrecy etc.; provisional measures: freezing of bank accounts, seizure of property to prevent its removal; measures to confiscate the proceeds of crime: enforcement by the requested country of a confiscation order made abroad, institution by the requested State, of domestic proceedings leading to confiscation at the request of another country.³¹³

4.3.5 Other Organizations

ML is an increasingly ramified, complex phenomenon that must be tackled in an integrated and interdisciplinary fashion.³¹⁴ Towards this there are many organizations throughout the world working coordinately. Some of the prominent ones are discussed below:

- i) Wolfsberg Anti Money Laundering Principles
- ii) International Money Laundering Information Network (IMoLIN)
- iii) Egmont Group of Financial Intelligence Units
- iv) Asia-Pacific Group on Money Laundering (APG) and
- v) International Organization of Securities Commissioners (IOSCO)

4.3.5.1 Wolfsberg Anti Money Laundering Principles

Wolfsberg anti money laundering principles are important step in the fight against money laundering, corruption and other related serious crimes.³¹⁵

Transparency International (TI), a Berlin based NGO in collaboration with 11 International Private Banks, ABN AMRO Bank N.V., Bank of Tokyo-

³¹³ Website: <conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT> Accessed on 24 August 2014.

³¹⁴ Ernesto Savona, *Responding to Money Laundering: International perspectives*, (Harwood Academic Publishers, Netherlands, 1997). p. 1.

³¹⁵ The original principles were made public on 30 October 2000 in Zurich Switzerland. Available at <<http://www.wolfsberg-principles.com>> Accessed on 10 May 2014.

Mitsubishi Ltd., Barclays Bank, Citigroup, Credit Suisse Group, Deutsche Bank AG, Goldman Sachs, HSBC, J.P. Morgan Private Bank, Santander Central Hispano, under the expert participation of Stanley Morris and Prof. Mark Pieth came out with these principles as important global guidance for sound business conduct in international private banking.³¹⁶ The Wolfsberg anti money laundering principles is important due to the fact that they come from initiative by private sector, governments and their regulatory and law enforcement agencies, or by government representatives acting through international forms such as the Financial Action Task Force (FATF). Normally, most initiatives to date have been public sector led by the Basel Committee of Bank Supervisors. The Wolfsberg Principles are a non-binding set of best practice guidelines governing the establishment and maintenance of relationships between private bankers and clients.³¹⁷

4.3.5.2 International Money Laundering Information Network (IMoLIN)

IMoLIN is an internet-based network assisting governments, organizations and individuals in the fight against ML and the financing of terrorism administered by UN office on Drugs and Crime. IMoLIN has been developed with the cooperation of the world's leading AML organizations. It provides with an international database called Anti-Money Laundering International Database

³¹⁶ Société Générale, and UBS AG, “Global Anti-Money-Laundering Guidelines for Private Banking.” Available at <<http://www.wolfsberg-principles.com>> Accessed on 10 May 2014.

³¹⁷ Kris Hinterseer, “The Wolfsberg Anti-Money Laundering Principles,” *Journal of Money Laundering Control*, Vol. 5, No.1 (Elsevier, Netherlands, 2001). pp. 25-41.

(AMLID) that analyses the jurisdictions of national AML legislation. It is intended as a tool for practitioners to assist them in their international cooperation and exchange of information efforts. Currently, the AMLID 2nd Round of Legal Analysis has been launched by UNODC on 27 February 2006, IMoLIN has twelve participating organization,³¹⁸ four international Organizations,³¹⁹ and five international financial institutions.³²⁰

4.3.5.3 Egmont Group of Financial Intelligence Units

The Egmont Group is the coordinating body for the international group of Financial Intelligence Units (FIUs) formed in 1995 at the Egmont Arenberg Palace in Brussels, to promote and enhance international cooperation in the fight against ML and financing of terrorism. Now known as the Egmont Group of Financial Intelligence Units, Egmont Group FIUs meet regularly to find ways to promote the development of FIUs and to cooperate, especially in the areas of information exchange, training and the sharing of expertise. The Egmont Group has evolved over the years and is currently (2013) comprised of 139 members FIUs from across the world FIUs are responsible for the money

³¹⁸ Asia/Pacific Group on Money Laundering (APG), Caribbean Financial Action Task Force (CFATF), Commonwealth Secretariat (COMSEC), Council of Europe–MONEYVAL, Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Eurasian Group (EAG), Financial Action Task Force (FATF), Financial Action Task Force on Money Laundering in South America (GAFISUD), Inter-Governmental Action Group Against Money Laundering and Terrorist Financing in West Africa (GIABA), International Criminal Police Organization (Interpol), Organization of American States/Inter-American Drug Abuse Control Commission (OAS/CICAD), United Nations Office on Drugs and Crime Global Programme against Money Laundering, Proceeds of Crime and the Financing of Terrorism (GPML). Website: <<http://www.imolin.org/imolin/index.html>> Accessed on 10 May 2014.

³¹⁹ European Commission (EC), International Organization of Securities Commissions (IOSCO), Offshore Group of Banking Supervisors (OGBS) and the Egmont Group. *Ibid.*

³²⁰ Asian Development Bank (ADB), International Monetary Fund (IMF), World Bank (IBRD/IDA), European Bank for Reconstruction and Development (EBRD) and Inter-American Development Bank (IDB). *Ibid.*

trail, and to counter ML and TF.³²¹ The Egmont Group also provided a forum for FIUs around the world to improve cooperation in the fight against ML and the financing of terrorism and to foster the implementation of domestic programs in this field.³²² This support includes:

- Expanding and systematizing international cooperation in the reciprocal exchange of information;
- Increasing the effectiveness of the FIUs by offering training and promoting personnel exchanges to improve the expertise and capabilities of personnel employed by FIUs;
- Fostering better and secure communication among the FIUs through the application of technology, such as the Egmont Secure Web (ESW);
- Fostering increased coordination and support among the operational divisions of member of the FIUs;
- Promoting the operational autonomy of the FIUs; and
- Promoting the establishment of the FIUs in conjunction with jurisdictions with an AML/CFT programme in place, or in areas with a programme in the early stages of development.

³²¹ Bangladesh Financial Intelligence Unit (BFIU) of Bangladesh has got the membership of prestigious Egmont Group on 3 July 2013 as its 132nd member. Website: <en.wikipedia.org/.../Egmont_Group_of_Financial_Intelligence_Units -> Accessed on 10 May 2014.

³²² Website: <en.wikipedia.org/.../Egmont_Group_of_Financial_Intelligence_Units -> Accessed on 10 May 2014.

- The FIUs are an essential component of the international fight against ML, the financing of terrorism, and related crime. The FIU is a central, national agency responsible for receiving, and as permitted, requesting, analysing and disseminating to the competent authorities, disclosures of financial information:(i) concerning suspected proceeds of crime and potential financing of terrorism, or (ii) required by national legislation or regulation has been adopted at the plenary meeting of the Egmont Group in Rome in November 1996, as amended at the Egmont Plenary Meeting in Guernsey in June 2004. Their ability to transform data into financial intelligence is a key element in the fight against ML and the financing of terrorism.³²³ The FIUs participating in the Egmont Group affirm their commitment to encourage the development of the FIUs and co-operation among and between them in the interest of combating ML and in assisting with the global fight against TF.³²⁴

4.3.5.4 Asia-Pacific Group on Money Laundering (APG or APGML)

The Asia-Pacific Group on Money Laundering (APG or APGML) is working in many fronts to prevent ML activities both at the domestic and the international levels. It is an international organization consisting of 41 member countries/jurisdictions, a number of international and regional observers including the United Nations, IMF and World Bank.³²⁵ Bangladesh is a founding member of APG and has been participating in annual plenary meeting

³²³ Website: <http://www.egmontgroup.org/PRESS_RELEASE_version_27_MAY_2008_G.pdf> Accessed on 12 May 2014.

³²⁴ Website: <http://www.egmontgroup.org/statement_of_purpose.pdf> Accessed on 12 May 2014.

³²⁵ Website: <en.wikipedia.org/wiki/Asia/Pacific_Group_on_Money_Laundering> Accessed on 12 May 2014.

since 1997. The key functions of APG is to assess APG members' compliance with the global AML standards through mutual evaluations; coordinate technical assistance and training with donor agencies and APG jurisdictions to improve compliance with the AML standards; co-operate with the international AML network; conduct research into ML methods, trends, risks and vulnerabilities; contribute to the global AML policy development by active Associate Membership of FATF. The APG has five key roles:³²⁶

- i) To assess compliance by APG members with the global standards through a robust mutual evaluation program.
- ii) To coordinate bi-lateral and donor-agency technical assistance and training in the Asia/Pacific region in order to improve compliance by APG members with the global standards.
- iii) To participate in, and co-operate with, the international AML network - primarily with the FATF and with other regional AML groups.
- iv) To conduct research and analysis into ML trends and methods to better inform APG members of systematic and other associated risks and vulnerabilities and
- v) To provide information to the private sector to better inform them of international developments in AML/CFT and provide a forum for them to engage with the APG.

³²⁶ Website: < www.apgml.org/about-us/page.aspx?p=91ce25ec-db8a-424c...> Accessed on 12 May 2014.

The APG assists its members to establish national coordination mechanisms to better utilise resources to combat ML and TF. It also contributes to the global policy development of AML and counter terrorism financing standards by active Associate Membership status in the FATF. At the same time, the APG also assists its members to establish coordinated domestic systems for reporting and investigating suspicious transaction reports and to develop effective capacities to investigate and prosecute ML and the financing of terrorism offences.

4.3.5.5 International Organization of Securities Commissioners

The International Organization of Securities Commissioners (IOSCO) is an organization of securities commissioners and administrators that have day to day responsibilities for securities regulation and the administration of securities laws in their respective countries. At present IOSCO is comprised with 182 members (109 ordinary, 11 associates, and 62 affiliate).³²⁷

The IOSCO passed a resolution on ML in 1992. Like other international organizations of this type, IOSCO does not have law-making authority. Similar to the Basel Committee and International Association of Insurance Supervisors (IAIS), it relies on its members to implement its recommendations within their respective countries. Thus one can see the effectiveness of efforts taken by the international community to fight the menace of ML. As the financial systems of the world grow increasingly interconnected, international cooperation has

³²⁷ Website: <en.wikipedia.org/.../International_Organization_of_Securities_Commissions -> Accessed on 31 May 2014.

been, and must continue to be, fundamental in curtailing the growing influence on national economies of drug trafficking, financial fraud, other serious transnational organized crime, and the laundering of proceeds of such crimes.³²⁸

The international effort to develop and implement effective AML controls has been marked by the persistent, ever present need to balance, on the one hand, the interests of government in access to financial records and even affirmative disclosure of suspicious activity, against, on the other hand, the interests of financial institutions is being free from unduly burdensome regulation, along with the interests of their customers in maintaining an appropriate degree of financial privacy. At one hand the international community is responding: trans governmental groups, made up of financial, regulatory and specialists of judiciary, are working in a variety of ways to share information and expertise to fight against ML activities and other related crimes, while on the other still, the crime of ML, and the fight against it, are both relatively recent phenomena, and much work remains to be done.

4.4 Drawbacks of the Existing Anti-Money Laundering Laws in Bangladesh

The government of Bangladesh is working to prevent ML activities and related crimes in different ways such as enacting AML laws and by implementing effective preventing measures. The effort of AML laws and their preventive

³²⁸ Joseph M. Myers, Assistant Director (International Programs) Financial Crimes Enforcement Network, in a seminar on “International Strategies to Combat Money Laundering on the Prevention and Control of Financial Fraud Beijing,” held at U.S. Department of the Treasury for the International Symposium on 19-22 October 1998. Available at <http://www.icclr.law.ubc.ca/Publications/Reports/myer_pap.pdf> Accessed on 10 May 2014.

measures do not seem sufficient to prevent ML in Bangladesh. There are so many problems found in preventing ML activities and related crimes. The foregoing discussion reveals many flaws and difficulties in preventing ML in Bangladesh.

4.4.1 Weaknesses of Enforcement Mechanism

The administrative functionaries of BB and ACC are under the control of the government of Bangladesh. It is important to control both the launderers and administrative pools/mechanism by proper AML laws as well as sincere effort of the government. A proper and effective preventing measure depends on the comprehensive AML laws, which may control the abuse of the legal process.

Police officers do not work independently against ML activities and related crime. They have to depend on the approval of District Magistrate to investigate ML activities and related crimes, without taking approval they cannot investigate such types of offences.³²⁹ The courts are not able to take cognizance of such types of offences without prior sanction of the government.³³⁰ There is a need to amend the provisions of AML laws to make the functions of police and judges more effective in preventing ML activities and related crimes.

The human trafficking clauses are not included in the Money Laundering Prevention Act 2012. On the other hand, the FATF and the APG, especially the USA, have long been pressing the government of Bangladesh to include a

³²⁹ *The Anti Terrorism Act 2009* (Act No. 16 of 2009). Sec-40(1).

³³⁰ *Ibid.*, Sec-40(2).

provision in the Anti Terrorism Act 2009 (amended in 2012 and 2013) that a terrorist of any other country of the world to be treated as a terrorist of Bangladesh and make the local laws on anti-terrorism equally applicable to foreign terrorists. However, the government of Bangladesh is still hesitant about declaring a terrorist of another country as a terrorist of Bangladesh.³³¹

4.4.2 Growth of Technology

Growth of information and communications technology may be a great tool for the economic development of a country like Bangladesh. The use of technology may improve economic opportunities for the poor, increase delivery of services to the underserved, improve governance, and benefit social change. At the same time, the launderers are also taking the opportunity of technological development to launder money. Cyber finance is the growing concept in a developing economy like Bangladesh. A large amount of money is stored in digital form. Money can be transferred through electronic and online gateways to multiple accounts. This convergence leads to a greater problem of tackling of different issues at one time. Besides, most of the people of Bangladesh have not confronted with hybrid crimes. The hybrid crimes with many attributes converging cyber crimes such as identity theft, illegal access to e-mail, and credit card fraud are coming together with ML and related activities. The law enforcement agencies do not matched up with the speed of growing technology, specifically the lame situation of cyber crimes.

³³¹ Editorial, "Bangladesh's Legalising Black Money." *The Daily Star*, Dhaka (2 June 2012).

4.4.3 Lack of Proper Information

A good business depends upon a good client. As a business organization, bank and capital market should pay particular attention to their clients under the Know Your Customer (KYC) norms. Banks and capital market should have a sound knowledge about their customer's personal identity, and their business pattern, financial transactions and commitments to prevent ML activities and related crimes.³³² However, these KYC norms do not cover the alternative remittance systems (ARS) such as informal alternative remittance system or ethnic alternative remittance system or underground banking or *hundi* as BB including other banks and capital market cannot regulate them.³³³ The government of Bangladesh may take initiative to prevent such type of remittance system by adopting formal alternative remittance system.

4.4.4 Governmental Interference

The government of Bangladesh legalising the undisclosed sums of money that is off the books envisages a payment of a flat penalty at the rate of 10 percent. However, there is a multi-layered tax slabs under the tax laws of Bangladesh. This facility of making black money white is likely to take effect in the economy of Bangladesh, despite strong reservations of the various bodies representing the business community. Furthermore, it is a serious question

³³² International Finance Investment and Commerce Bank Limited (IFIC), Head Office, Dhaka, Bangladesh "Guidelines on Prevention of Money Laundering," (June 2006). Available at <<http://www.ificbank.com.bd/GUIDELINES%20ON%20PREVENTION%20OF%20MONEY%20LAUNDERING.pdf>> Accessed on 10 May 2014.

³³³ Mahfuzur Rahman, *Money Laundering Protirodh* (3rd ed.; Borna Binnash, Dhaka, 2010). p. 152.

how exactly does the government intend to legalise ill-gotten money as a signatory state of different international AML statutes. The undisclosed sums are commonly associated with corruption, crime or other illegal activities.³³⁴

Negotiation could play an important role to solve the aforesaid dispute. The dispute may be solved outside the court or by following other than the judicial procedure or by negotiation with the government authority on case to case basis with charging penalties to avoid any kind of social, cultural, political, and economic impact.

4.4.5 Improper Endorsement

People are moving from one place to another and one country to another for work, business or profession, medical treatment, tourism, and for other necessities. During the time of traveling, it is usual for some people to carry excess money without the consent of proper authority and thereby violating the rules of customs to meet up personal need, to avoid lengthy procedural complicity, and to save time. The government of Bangladesh may take proper steps to simplify the endorsement procedure to avoid any complicity.

4.4.6 Tricky Policies

Money launderers are using some tricky policies to launder money by using false or fake invoice/under invoice/over invoice at the time of opening a Letter of Credit (LC). The launderers are also using fake accounts and instruments at the time of money or fund transfer. The use of debit and credit cards in ATM machines, card cheques, cyber space, online transactions, online bank accounts,

³³⁴ Editorial, "Bangladesh's Legalising Black Money," *The Daily Star*, Dhaka (2 June 2012).

and electronic payments are also another mode of ML. BB is now under pressure to detect or to find out the tricky policy and new techniques of ML. There is a need to add new provisions in existing AML laws of Bangladesh to prevent the use of tricky policy and new techniques of ML.

4.4.7 Inadequate Reporting

The implementation of existing rules, regulations and laws in practice is a big challenge for the financial and non-financial institutions and other organs due to weak legal system and political influences. In many cases, launderer tries to convince weak regulatory administration by using their laundered money. So, it is not always easy for a developing country like Bangladesh to check ML and to take action against all the fictitious transactions. There is a need of support of legal authorities like BB and government administration to ensure adequate reporting in order to prevent ML activities and related crimes.

4.4.8 Remittance Flow

A large number of Bangladeshi people are living worldwide for education, research work, services, professional needs, and business. Most of them are living abroad with taking prior permission and approval from the legal authority and the rest are staying illegally. Only in Saudi Arabia, 2.5 million Bangladeshi people are living among them 1.5 million are staying there without taking proper approval from the legal authority. The unauthorized expatriates are sending their earned money from abroad using illegal channels.³³⁵ To solve the problem government should take effective initiative to legalize those people who are staying there illegally.

³³⁵ Personal interview with Mr. Md. Belal Hossain on 15 July 2013 at Macca, a Bangladeshi origin hotel business man living at Macca since 1999.

4.4.9 Lack of Proof/Evidence

The execution of AML laws and effective preventing measures depends on proof/evidence. Collecting evidence of corroborative elements with predicate offences is also necessary to prosecute. However, as per section 7 of the Criminal Law (Amendment) Act 1958, when any person is charged of possessing pecuniary resources or property which is disproportionate to his known sources of income, for which he cannot satisfactorily account, it may be taken as a relevant fact in deciding whether he is guilty of the particular offence with which he is charged.

4.4.10 Alternative Dispute Resolution (ADR)

Alternative dispute resolution (ADR) includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement short of litigation.³³⁶ The assigned or designated or prescribed law enforcing organ of the government of India follows the concept of ADR to solve the disputes related to ML. Generally, they solve their problem outside the court on case to case basis with charging penalties to avoid any kind of social, political and economic impacts. A few numbers of disputes in connection with ML activities go to the court for settlement.³³⁷ The government of Bangladesh may introduce a provision of ADR in AML laws to get a better result in preventing ML activities in Bangladesh.

³³⁶ Also known as external dispute resolution in some countries, such as Australia and India.

³³⁷ Personal interview with professor Dr. S. S. Chatterji, Head and Dean, Department of Law, University of Calcutta at chairman office of the Department of law, University of Rajshahi, Bangladesh on 7 June 2013.

4.5 Conclusion

The Prevention of Money Laundering Act 2012 and the Anti Terrorism Act 2009 (amended in 2012 and 2013) introduced to accomplish the conditions of the Asia Pacific Group on Money Laundering (APG or APGML), a global organisation that monitors different countries' compliance with international AML and combating TF standards. The AML laws of Bangladesh widened the definition of ML. The AML laws of Bangladesh have added some provisions to prevent ML activities and related crimes through any Bangladeshi institution or individual. At the same time, the AML laws expanded the list of 'predicate offence' through which money or wealth could be laundered at home or abroad. Terrorism or financing terrorist activities, violation of intellectual property rights, extortion, environmental crimes, and tax related crimes have also been included. The new AML laws have also expanded the list of organisations that must submit reports to the central bank about suspicious transactions.

Bangladesh is a newly active nation at the national and international arena in preventing or controlling illegal transfer of money or assets at home or abroad and recovery of the same. Bangladesh needs enabling infrastructure, minimum expertise and institutional strengths to prevent ML activities and related crimes. The country is far behind in building ability to derive full supports from the international bodies. The proceedings of ML related cases inside Bangladesh takes much longer time in obtaining court verdict required for recovery of assets from outside the country. The influence of political and business forces are so

strong in the country that if they can manage to delay the matter and get a longer time, in most cases they manage the events in their favour with the change of government in power. Bangladesh has to find the way for tapping benefit from all international agencies which are helpful for recovery of assets.

ML is not only a national problems, it is also a global problem and ought to draw national and global concerns. Both the national and international nature of ML requires domestic and international law enforcement cooperation to successfully investigate and prosecute the ML activities and related crimes. The existing AML laws of Bangladesh are not adequate to prevent proliferation of money laundering in Bangladesh. There is a need of international cooperation among judicial and law enforcement authorities, and also charging on penalties against launderers to prevent or control ML in Bangladesh.

Chapter Five

Implementation of Anti Money Laundering Laws in Bangladesh

5.1 Introduction

The government of Bangladesh has started to improve the preventing measures of ML through getting membership of the Asia Pacific Group on Money Laundering (APGML) in 1997. Later on, the government of Bangladesh enacted the Anti-Money Laundering Act 2002 which was repealed by the Money Laundering Prevention Act 2009. Further, the government of Bangladesh enacted the Money Laundering Prevention Act 2012, repealing the Money Laundering Prevention Act 2009, and also enacted the Anti Terrorism Act 2009 (amended in 2012 and 2013) to meet the international standards in preventing ML and Terrorist Financing (TF). In 2007, the government of Bangladesh recognized the Central Bank's Anti-Money Laundering Department (AMLDD) as the country's official Financial Intelligence Unit (FIU). The government of Bangladesh has taken effective AML measures in different sectors, particularly in the banking and non-banking financial institutions, securities market and insurance sectors through issuing guidelines i.e., "Guidance Notes on Prevention of Money Laundering and Terrorist Financing" and "Guidelines on Prevention of Money Laundering & Combating Financing of Terrorism for Capital Market

Intermediaries”, Bangladesh Financial Intelligence Unit (BFIU) of Bangladesh Bank (BB) in 2012 and 2013 respectively. At the same time, the FATF encourages Bangladesh to address its remaining deficiencies and continue the process of implementing its action plan.

This chapter discusses the role of governmental institutions engaged in implementation of the provisions of AML laws, circulars and guidelines with a view to preventing ML activities and associated crimes in Bangladesh. This chapter deals with both of their operational and functional frameworks. The obstacles and challenges faced in implementation by the concerned authority or institutions engaged in preventing ML activities and related crimes in Bangladesh are also focused in this chapter.

5.2 Administrative Rules and Guidelines for Banks/FIs of Bangladesh

The process of ML is very dynamic and ever evolving. The money launderers are inventing more and more complicated and sophisticated procedures and using new technology for laundering money. To address these emerging challenges, the global community has taken various initiatives against ML. In accordance with international initiatives, the BB also introduced guidelines/policies³³⁸ for the following purposes:

³³⁸ Under the Money Laundering Prevention Act 2012 (Act No.05 of 2012) and the Anti Terrorism Act 2009 (amended in 2012 and 2013) (Act No.16 of 2009).

- i) Appointment of Compliance Officer
- ii) Customer Identification
- iii) Employee Identification
- iv) Compliance Programme
- v) Record Keeping
- vi) Control Mechanism
- vii) Training and Awareness

5.2.1 Appointment of Compliance Officer

The financial sector plays an important role in the economy of Bangladesh. The government of Bangladesh has taken different initiatives to prevent ML activities through banks or Financial Institutes (FIs). To ensure AML compliance programme every banks or FIs formed two committees:

- i) Central Compliance Unit (CCU) and
- ii) Branch Compliance Unit (BCU).

5.2.1.1 Central Compliance Unit (CCU)

The CCU is formed under the leadership of a high official of each banks/FIs at their Head Office to arrange for internal monitoring and control. In order to accomplish properly the jurisdiction and function of the CCU, each financial institution will determine institutional strategy and programme. The CCU issues instructions for their branches. These instructions prepare on the basis of combination of issues in monitoring of transactions, internal control, policies

and procedures from the point of view of preventing ML. The CCU is responsible and dedicated solely to banks or FIs to perform their compliance functions.³³⁹ The following responsibilities belong to CCU:

- to prepare an overall assessment report after evaluating the self assessment reports received from the branches and to submit it with comments and recommendations to the chief executive of the banks or FIs;
- to prepare an assessment report on the basis of the submitted checklist of inspected branches by the Internal Audit Department on that particular quarter; and
- to submit a half-yearly report to the BFIU within 60 days after the end of that particular half-year.³⁴⁰

The CCU is headed by the Chief Anti-Money Laundering Compliance Officer (CAMLCO). The CAMLCO is appointed by banks or FIs at each of their head office to implement and enforce AML policies, procedures and measures. The CAMLCO reports directly to the Chief Executive Officer/ Managing Director from time to time about his/her activities. The CAMLCO is also responsible to coordinate and monitor day to day compliance with applicable AML related laws, rules and regulations as well as with its internal policies, practices, procedures and controls. The designated CAMLCO, directly or through CCU, is a central point of contact for communicating with the

³³⁹ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 28.

³⁴⁰ *Ibid.*

regulatory and/or investigation agencies regarding issues related to financial institution's AML programme. The position of the CAMLCO is not below the third rank in seniority in organisational hierarchy. The CAMLCO is experienced with working knowledge of the diverse financial products offered by the financial institutions. The person also obtains relevant financial institutional and compliance experience as an internal auditor or regulatory examiner, with exposure to different financial institutional products and businesses. Product and financial institutional knowledge could be obtained from being an external or internal auditor, or as an experienced operational staff. The CAMLCO should have a minimum of seven years of working experience, with a minimum of three years at a managerial/administrative level. Each financial institution prepares a detailed specification of the role and obligations of the CAMLCO. Depending on the scale and nature of the financial institution the designated CAMLCO may choose to delegate duties or rely on suitably qualified staff for their practical performance whilst remaining responsible and accountable for the operation of the designated functions. The CAMLCO is responsible for the following works:³⁴¹

- to monitor, review and coordinate application and enforcement of the financial institution's compliance policies including AML compliance policy. This compliance policy will include an AML risk assessment, practices, procedures and controls for account opening, KYC procedures

³⁴¹ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance Notes on Prevention of Money Laundering and Terrorist Financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. pp. 26-30.

and ongoing account/transaction monitoring for detecting suspicious transaction/account activity, and a written AML training plan;

- to monitor changes of laws/regulations and directives of the BB and revise its internal policies accordingly;
- to respond to compliance questions and concerns of the staff and advise regional offices/branches/units and assist in providing solutions to potential issues involving compliance and risk;
- to ensure that the financial institution's AML policy is complete and up-to-date, to maintain ongoing awareness of new and changing business activities and products and to identify potential compliance issues which considered by the financial institution;
- to develop the compliance knowledge of all staff, especially the compliance personnel and conduct training courses in the institution in this regard;
- to develop and maintain ongoing relationships with regulatory authorities, external and internal auditors, regional/branch/unit heads and compliance resources to assist in early identification of compliance issues;
- to assist in review of control procedures in the financial institution to ensure legal and regulatory compliance and in the development of adequate and sufficient testing procedures to prevent and detect compliance lapses;
- to monitor the business through self-testing for AML compliance and take any required corrective action;
- to manage the Suspicious Transaction Report (STR)/ Suspicious Activity Report (SAR) process;

- to review transactions referred by divisional, regional, branch or unit compliance officers as suspicious;
- to review the transaction monitoring reports (directly or together with account management personnel);
- to ensure that internal Suspicious Activity Reports (SARs);
- to reflect the uniform standard for suspicious activity involving possible money laundering or terrorist financing established in its policy;
- to accompany by documentation of the branch's decision to retain or terminate the account as required under its policy;
- to advise to other branches of the institution who are known to have a relationship with the customer;
- to report to the Chief Executive Officer, and the Board of Directors of the institution when the suspicious activity is judged to represent significant risk to the institution, including reputation risk;
- to ensure a documented plan of corrective action, appropriate for the seriousness of the suspicious activity, be prepared and approved by the branch manager;
- to maintain a review and follow up process to ensure that planned corrective action, including possible termination of an account, be taken in a timely manner; and
- to manage the process for reporting suspicious activity to the BFIU after appropriate internal consultation.

5.2.1.2 Branch Compliance Unit (BCU)

The Branch Anti-Money Laundering Compliance Officer (BAMLCO) is appointed by banks or FIs at each of their branches. The BAMLCO is a second man of a branch and have a minimum three year experience in related field.³⁴²

The responsibilities of a BAMLCO are as follows:

- to manage the transaction monitoring process;
- to report any suspicious activity to Branch Manager, and if necessary to the CAMLCO;
- to provide training to branch staff;
- to communicate to all staffs in case of any changes in national or its own policy; and
- to submit branch returns to CAMLCO timely.

5.2.2 Customer Identification

The correct and complete identification of a customer is important to keep the financial sector free from ML activities and related crimes.³⁴³ It is necessary to collect adequate information up to its satisfaction about the customer's identity and underlying purpose of establishing relationship with the banks or FIs.³⁴⁴

³⁴² Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance Notes on Prevention of Money Laundering and Terrorist Financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 30.

³⁴³ A customer is defined as: any person or institution maintaining an account of any type with a bank or financial institution or having banking related business; the person or institution as true beneficial owner in whose favour the account is operated; the trustee, intermediary or true beneficial owner of the transaction of the accounts operated by the trust and professional intermediaries (such as lawyer/law firm, chartered accountant, etc) under the existing legal infrastructure. Anti Money Laundering (AML) Circular No.24 dated 3 March 2010 (BB, Head Office, Dhaka).

³⁴⁴ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-25.

The conduct of Customer Due Diligence (CDD) is also important to protect banks or FIs from the risks of ML by customers' willful or unwilling activities. The CDD follows the following criteria:

5.2.2.1 Know Your Customer (KYC)

Know Your Customer (KYC) programme is an essential part of a bank or FI. The correct and sufficiently verified information about a customer is the most effective defense against ML activities. However, inadequate KYC programme may be subject to significant risks, especially legal and reputation risk. Sound KYC policies keep the banks or FIs safe and sound, and also protect the integrity of its system by reducing ML, TF and other related offences.

It is required for all reporting agencies to maintain correct and concrete information with regard to identity of its customer during the operation of their accounts.³⁴⁵ If the financial institution is unable to identify the customer and verify that customer's identity using reliable, independent source documents, data or information, and to identify the beneficial owner, and to take reasonable measures to verify the identity of the beneficial owner and unable to obtaining information on the purpose and intended nature of the business relationship, it should not open the account, commence business relations or perform the transaction; or should terminate the business relationship; and should consider making a STRs report in relation to the customer.³⁴⁶ When a business relationship is being established, the nature of the business that the customer

³⁴⁵ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012), Sec-25(1)

³⁴⁶ *The Anti Terrorism Act, 2009* (Act No. 16 of 2009). Sec-15(1)

expects to conduct with the institution should be ascertained at the outset to establish what might be expected later as normal activity. This information should be updated as appropriate, and as opportunities arise. The banks or FIs need to have a clear understanding of the business carried out by their customers to judge whether a transaction is or is not suspicious.

5.2.2.2 Identifying Real Person

Identifying real person is important to prevent ML and related crimes through banks or FIs. The banks or FIs has to establish to its satisfaction that it is dealing with a real person (natural, corporate or legal), and must verify the identity of persons who are authorized to operate any account, or transact business for the customer. Personal interview is important for the prospective customer to safeguard against opening of fictitious account. The best identification documents possible should be obtained from the prospective customer i.e. those that are the most difficult to obtain illicitly. No single piece of identification can be fully guaranteed as genuine, or as being sufficient to establish identity so verification will generally be a cumulative process. The overriding principle is that every FI must know who their customers are, and have the necessary documentary evidence to verify this. Collection of document is not enough for KYC; identification is very important.³⁴⁷

³⁴⁷ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 37.

5.2.2.3 Customer Acceptance Policy

The banks or FIs needs to develop a clear customer acceptance policy and procedures, laying down explicit criteria for acceptance of customers including a description of the types of customer that are likely to pose a higher than average risk to a financial institution. In preparing such policies, factors such as customers' background, country of origin, public or high profile position, linked accounts, business activities or other risk indicators should be considered. It is important that the customer acceptance policy is not so restrictive, that it results in a denial of access by the general public to financial services, especially for people who are financially or socially disadvantaged. On the other hand, quite extensive due diligence would be essential for an individual with a high net worth whose source of funds is unclear. Decisions to enter into business relationships with higher risk customers, such as public figures or politically exposed persons should be taken exclusively at senior management level. The customer acceptance policy has to ensure that explicit guidelines are in place on the following aspects of customer relationship in the financial institution:³⁴⁸

- i) No account should be opened in anonymous or fictitious name.
- ii) Parameters of risk perception should be clearly defined in terms of the source of fund, the nature of business activity, location of customer and

³⁴⁸ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance Notes on Prevention of Money Laundering and Terrorist Financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. pp. 39-41.

his clients, mode of payments, volume of turnover, service offered, social and financial status etc. to categorize customers into different risk grades.

- iii) It is important to collect documents and other information in respect of different categories of customers depending on perceived risk.
- iv) Not to open an account or close an account where the financial institution is unable to apply appropriate customer due diligence measures i.e. financial institution is unable to verify the identity and/or obtain documents required as per the risk categorization due to non cooperation of the customer or non reliability of the data/information furnished to the financial institution. Decision by a financial institution to close an account should be taken at a reasonably high level after giving due notice to the customer explaining the reasons for such a decision.
- v) Circumstances are important when a customer gets permission to act on behalf of another person/entity or operate by a mandate holder or where an account is opened by an intermediary in fiduciary capacity. There should be clearly spelt out in conformity with the established law and practices of financial service.
- vi) Necessary checks before opening a new account to ensure that the identity of the customer does not match with any person with known criminal background or with banned entities such as individual terrorists or terrorist organisations etc.

vii) The status of a customer may change as relation with a customer progresses. The transaction pattern, volume of a customer's account may also change. With times an ordinary customer can turn into a risky one. To address this issue, customer acceptance policy should include measures to monitor customer's activities throughout the business relation.

5.2.2.4 Appropriateness of Documents

Appropriate documentation is necessary for verifying the identity of a customer. Generally identity means a set of attributes which uniquely define a natural or legal person (an individual, corporate body, and partnership etc). To identify or to verify a person one or more information or document is required from the following criteria or documents:³⁴⁹

- i) Correct name and/or names,
- ii) Parent's names,
- iii) Spouse name,
- iv) Date of birth,
- v) Current and permanent addresses,
- vi) Details of occupation/employment and sources of wealth or income,
- vii) Contact information, such as—mobile/telephone number,
- viii) Birth Certificate,

³⁴⁹ Anti Money Laundering (AML) Circular No.02 and 03 dated 17 July 2002 and 10 December 2002 respectively (BB, Head Office, Dhaka).

- ix) TIN/VAT Registration,
- x) Current valid passport,
- xi) Valid driving license,
- xii) National ID Card,
- xiii) Employer provided ID Card, bearing the photograph and signature of the applicant,
- xiv) Provision of a recent utility bill, tax assessment or bank statement containing details of the address (to guard against forged copies, it is strongly recommended that original documents are examined);
- xv) Checking the voter lists,
- xvi) Checking the telephone directory,
- xvii) Visiting home/office, and
- xviii) Sending thanks letter.

The above information or documents are necessary to demonstrate that a person of that name exists at the address given, and that the applicant is that person. There is obviously a wide range of documents which might be provided as evidence of identity. It is important for banks or FIs to decide the appropriateness of any document in the light of other procedures adopted. However, particular care should be taken in accepting documents which are easily forged or which can be easily obtained using false identities.

5.2.2.5 Introducer

An introducer plays an important role to identify the customer and to verify his/her identity. An introduction from a respected customer, personally known to the management, or from a trusted member of staff, may assist the verification procedure but does not replace the need for verification of address as set out above. Details of the introduction need to be kept as a record on the customer's file. However, personal introductions without full verification should not become the norm, and directors/senior managers must not require or request staff to breach account opening procedures as a favor to an applicant.³⁵⁰

5.2.3 Employee Identification

Employee identification is a primary duty of a bank or FI to prevent ML activities. Institutions and businesses learn at great expense that an insider can pose the same ML threat as a customer. It has become clear in the field that having co-equal programmes to know your customer and to know your employee is essential. In an effort to identify and anticipate trouble before it costs time, money and reputational damage, banks or FIs should develop programme to look closely at the people inside their own organisations.³⁵¹

5.2.3.1 Appointment of Employee

One of the major purposes of preventing ML activities is to protect the banks or FIs from risks arising out of ML. To meet this objective, banks or FIs shall

³⁵⁰ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance Notes on Prevention of Money Laundering and Terrorist Financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 42.

³⁵¹ *Ibid.*

have to undertake proper screening mechanism in their different appointment procedures so that they do not face ML risks from any of their staff. To ensure proper compliance of ML activities each bank or FI shall arrange suitable training for their officials. Banks/ FIs shall respond to customers on different matters including KYC. Financial Institutions shall from time to time distribute leaflets among customers to make them aware about ML and also arrange to stick posters in every branch at a visible place.

5.2.3.2 Know Your Employee (KYE)

The good will of a bank/FI depends on its employee, services, transparency and integrity. A good employee selection is an important task of a bank or FI. Know Your Employee (KYE) programme helps to select an employee. KYE programme means that the institution has a programme in place that allows it to understand an employee's background, conflicts of interest and susceptibility to ML complicity. Policies, procedures, internal controls, job description, code of conduct/ethics, levels of authority, compliance with personnel laws and regulations, accountability, dual control, and other deterrents should be firmly in place. Background screening of prospective and current employees, especially for criminal history, is essential to keep out unwanted employees and identifying those to be removed. It can be an effective risk management tool, providing management with some assurance that the information provided by the applicant is true and that the potential employee has no criminal record. Used effectively, the pre-employment background checks may reduce turnover by verifying that

the potential employee has the requisite skills, certification, license or degree for the position; deter theft and embezzlement; and prevent litigation over hiring practices. An institution should verify that contractors are subject to screening procedures similar to its own. The sensitivity of the position or the access level of an individual employee may warrant additional background screening, which should include verification of references, experience, education and professional qualifications. The extent of the screening depends on the circumstances.³⁵²

5.2.3.3 Responsibilities of Employee

The employees of a bank/FI are responsible in different functions of the institute. The responsibilities of an employee are discussed below:³⁵³

- Account officer is responsible to perform due diligence on prospective clients prior to opening an account, to be diligent regarding the identification (s) of account holder and the transactions relating to the account, to ensure all required documentation is completed satisfactorily, to complete the KYC profile for the new customer, ongoing monitoring of customers KYC profile and transaction activity, and to escalate of any suspicion to the Branch Manager or BAMLCO.
- Customer service officer is responsible to support the account officer in any of the above roles and perform the account officer roles in his absence.

³⁵² Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 46.

³⁵³ *Ibid*, pp. 29-31.

- Operations staff is responsible to ensure that all control points are completed prior to transaction monitoring; to be diligence on transaction trends for clients; and to update customer transaction profiles in the ledger/system.
- Branch Manager (Unit Head) is responsible to ensure that the programme is effective within the branch/unit, and first point of contact for any issues.
- Risk Management or Credit Officer or Internal Control Officer is responsible to perform risk assessment for the business, to perform periodic quality assurance on the programme in the unit, and to communicate updates in laws and internal policies.
- Operations and Technology Manager is responsible to ensure that the required reports and systems are in place to maintain an effective programme.
- Branch Manager or Controller of branches is overall responsible to ensure that the branches have a programme in place and that it is working effectively, and
- Chief Executive Officer (CEO) is overall responsible to ensure that the Business has an AML programme in place and it is working effectively.

5.2.4 Compliance Programme

Compliance programme is also important for a bank/FI to administer and maintain its own AML policy including record keeping and reporting

requirements. Banks/FIs need to establish and to maintain an effective AML programme that includes at least the followings:³⁵⁴

- i) Development of internal policies, procedures and controls,
- ii) Appointment of an AML Compliance Officer,
- iii) Ongoing employee training programme and
- iv) Independent audit function including internal and external audit function to test the compliance programme.

The compliance programme should be documented, approved by the Board of Directors and communicated to all levels of the organisation. In developing an AML compliance programme, attention should be paid to the size and range of activities, complexity of operations, and the nature and degree of ML risks associated with banks/FIs. The statement of compliance policy should at a minimum include:³⁵⁵

- A statement that all employees are required to comply with applicable laws and regulations and corporate ethical standards.
- A statement that all activities carried out by the financial institution must comply with applicable governing laws and regulations.
- A statement that compliance with rules and regulations is the responsibility of each individual in the financial institution in the normal course of their

³⁵⁴ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012guideline.pdf>> Accessed on 20 January 2014. p. 26.

³⁵⁵ *Ibid*, p. 27.

assignments. It is the responsibility of the individual to become familiar with the rules and regulations that relate to his or her assignment. Ignorance of the rules and regulations cannot be an excuse for non-compliance.

- A statement that should direct to a compliance officer or other knowledgeable individuals when there is a question regarding compliance matters.
- A statement that employees will be held accountable for carrying out their compliance responsibilities.

5.2.5 Record Keeping

Record keeping is an important duty for an employee of a bank/FI. All documents collected or gathered for establishing relationship needs to fill with supporting evidence. Where this is not possible, the relevant details should be recorded on the applicant's file. Institutions which regularly conduct curiosity transactions, should record the details in a manner which allows cross reference to transaction records. To retain correct and full records of customers' identification and transactions while operating an account of a customer, and to retain the records of customers' identification and transactions at least for five years after closing of relationships with the customers of any financial institute.³⁵⁶ The records prepared and maintained by any bank/FI on its customer relationship and transactions should be such that:

- requirements of legislation and the BB directives are fully met,

³⁵⁶ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-25(1).

- to competent third parties will be able to assess the institution's observance of ML policies and procedures,
- to any transactions effected via the institution can be reconstructed,
- to any customer can be properly identified and located,
- to all suspicious reports received internally and those made to Bangladesh Bank can be identified, and
- the institution can satisfy within a reasonable time any enquiries or court orders from the appropriate authorities as to disclosure of information.

5.2.5.1 Retrieval of Records

To satisfy the requirements of law and to meet the purpose of record keeping, it is important that records are capable of retrieval without undue delay. It is not necessary to retain all the documents relating to customer identity and transaction physically at the premises of the branch of a financial institution, provided that they have reliable procedures for keeping the hard copy at a central archive, holding records in electronic form, and that can be reproduced and recollected without undue delay. It is not always necessary to retain documents in their original hard copy form, provided that the firm has reliable procedures for holding records in microchips or electronic form, as appropriate, and that these can be reproduced without undue delay.

5.2.5.2 STR and Investigation

Where a bank or FI has submitted a report of suspicious transaction to BFIU or where it is known that a customer or any transaction is under investigation, it should not destroy any records related to the customer or transaction without the consent of the BFIU or conclusion of the case even though the five-year limit may be elapsed. To ensure the preservation of such records the financial institutions should maintain a register or tabular records of all investigations and inspection made by the investigating authority or BB and all disclosures to the BFIU.³⁵⁷ The register should be kept separate from other records and contain as a minimum the following details:

- i) the date of submission and reference of the STR/SAR;
- ii) the date and nature of the enquiry;
- iii) the authority who made the enquiry, investigation and reference; and
- iv) details of the account(s) involved.

5.2.5.3 Training Records

Training is necessary for an employee of a bank/FI. At the same time, it is necessary to keep record of that training programme. Banks/FIs comply with the regulations concerning staff training, and they also maintain training records which include: details of the content of the training programmes provided, the names of staff who have received the training, the date/duration of training, the results of any testing carried out to measure staffs understanding of the requirements, and an on-going training plan.

³⁵⁷ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), “Guidance Notes on Prevention of Money Laundering and Terrorist Financing.” Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012/guideline.pdf>> Accessed on 20 January 2014. pp. 50-52.

5.2.5.4 Branch Level Record Keeping

Branch level record keeping is necessary to ensure the effective monitoring and demonstrate their compliance with the concerned regulations. Banks or FIs have to keep the following records at the branch level either in hard form or electronic form to ensure the preventing measures of ML:

- i) Information regarding Identification of the customer,
- ii) KYC information of a customer,
- iii) Transaction report,
- iv) Suspicious Transaction/Activity Report generated from the branch,
- v) Exception report,
- vi) Training record,
- vii) Return submitted or information provided to the Head Office or competent authority.

5.2.5.5 Sharing of Records

Account related information is necessary from banks/FIs to investigate the said account related cases. Banks/FIs shall not share account related information to the investigating authority, the ACC or person authorised by the ACC, to investigate the said cases without having court order or prior approval from the BB.³⁵⁸

5.2.6 Control Mechanism

The compliance programme also relies on the variety of internal controls, including management report, built-in safeguards and exception report that

³⁵⁸ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-9.

keep the programme working. The following elements need to be included for operational controls of any policy:³⁵⁹

- statement of responsibility for compliance with policy,
- customer due diligence,
- customer identification/verification,
- additional know your customer information,
- high risk customers,
- non face to face business (if applicable),
- handling of politically exposed persons,
- monitoring for suspicious transaction/activity,
- cooperation with the authorities,
- record keeping,
- screening of transactions and customers,
- training and awareness, and
- adoption of risk management practices and use of a risk-based approach.

5.2.7 Training and Awareness Programme

The importance of a successful training and awareness programme cannot be overstated. Employees in different business functions need to understand how the financial institution's policy, procedures, and controls affect them in their day to day activities. According to AML circulars, each bank/FIs shall arrange

³⁵⁹ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance Notes on Prevention of Money Laundering and Terrorist Financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012/guideline.pdf>> Accessed on 20 January 2014. pp. 26-28.

suitable training for their officials to ensure proper compliance of ML prevention activities. A general training programme should include the following:³⁶⁰

- general information on the risks of ML scheme, methodologies, and typologies,
- legal framework, how AML related laws apply to banks/FIs and their employees,
- institution's policies and systems with regard to customer identification and verification, due diligence and monitoring,
- how to react when faced with a suspicious client or transaction,
- how to respond to customers who want to circumvent reporting requirements,
- stressing the importance of not tipping off clients,
- suspicious transaction reporting requirements and processes, and
- duties and accountabilities of employees.

The person responsible for designing the training needs to identify which, if any, of these topics relate to the target audience. Effective training should present real life ML schemes, preferably cases that have occurred at the institution or at similar institutions, including, where applicable, how the pattern of activity was first detected and its ultimate impact on the institution. Staff of a bank/FI must be aware of their own personal statutory obligations and that they can be personally

³⁶⁰ Bangladesh Financial Intelligence Unit (BFIU), Bangladesh Bank (BB), "Guidance Notes on Prevention of Money Laundering and Terrorist Financing." Dhaka, Bangladesh (16 September 2012). Available at <<http://www.bangladesh-bank.org/aboutus/regulationguideline/aml/16sep2012/guideline.pdf>> Accessed on 20 January 2014. pp. 32-35.

liable for failure to report information in accordance with internal procedures. All staff must be trained to co-operate fully and to provide a prompt report of any suspicious transactions/activities. It is, therefore, important that financial institutions introduce comprehensive measures to ensure that all staff and contractually appointed agents are fully aware of their responsibilities.

5.3 Anti Money Laundering Instruments

ML is a fairly new concept in Bangladesh. The AML instruments are playing an effective role to prevent ML activities and related crimes since 2002, after passing the AML laws in Bangladesh. The AML instruments may be discussed on the basis of their functions. These are stated below:

- i) Administrative Mechanism and
- ii) Judicial Mechanism

5.3.1 Administrative Mechanisms

The government of Bangladesh has taken various steps to prevent ML activities and associated crimes in Bangladesh. The following institutes and organs are working together in preventing ML activities in Bangladesh:

- i) Bangladesh Bank,
- ii) Anti-Corruption Commission (ACC),
- iii) Ministry of Finance (MoF) and
- iv) Ministry of Home Affairs and
- v) Attorney General Office

5.3.1.1 Bangladesh Bank

Bangladesh Bank (BB) was established as an independent organization according to the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972) in Dhaka and was effective from 16 December 1971. It is the central bank and main regulatory body for the financial and monetary system of Bangladesh. It has nine offices located at different divisions of the country among which two at Motijheel and Sadarghat of the capital city Dhaka, two in Rajshahi division namely Bogra and Rajshahi and one in each of the rest five divisions namely Chittagong, Khulna, Sylhet, Barisal and Rangpur. The BB is basically responsible for all the core functions that are done by all the monetary and financial sector regulators. The BB is also responsible for some other supporting functions.³⁶¹ These are stated below:

- To formulate and implement monetary and credit policies.
- To regulate, supervise and monitor financial intermediaries like banks and non-bank financial institutions.
- To issuance of currency and circulation across the country.
- To regulate, monitor and manage the payment system.
- To hold and manage the Foreign Exchange (FX) reserve of the country.
- To create committed Bankers to the Government.
- To prevent ML activities and resultant crimes.
- To implement Foreign Exchange Regulation Act 1947.
- To preserve all credit information.

³⁶¹ Mohammad Jahid Iqbal, 'Banking Sector's Performance in Bangladesh-An Application of Selected Camels Ratio' *Asian Institute of Technology School of Management, Thailand* (May 2012). Available at <www.pmbf.ait.asia/sites/default/files/report/report_jahidiqbal.pdf> Accessed on 25 March 2014.

Besides these functions, the BB is also responsible for asset classification, loan concentration, setting up single borrower exposure limit, licensing to the new bank and branch, impose penalty for non-compliances, intervention in the management for assistance if any bank face difficulties, prepare guidelines and issuance directives regarding banking operation, guidelines for core risk management, publication of different economic review etc. Needless to say, banking sector plays an important role in the economic development of a country. Especially for Bangladesh, a sound and efficient banking system is one of the most important preconditions to achieve economic development.³⁶²

The BB is responsible for the banking supervision in Bangladesh. The Bank's affairs and business is controlled by a Board of Directors, made up of nine members, including the Governor, Deputy Governor, three government officials and four persons with advanced banking, commerce and finance experience. The Bank and Financial Institutions Division of Ministry of Finance exercises control over the state controlled banks through appointment/ nomination of the Board of Directors, although they are under the supervisory purview of the BB. The BB supervises all the commercial banks as per instructions given in the Bank Company Act 1991 in conjunction with the Bangladesh Bank Order 1972.³⁶³

³⁶² Mohammad Jahid Iqbal, 'Banking Sector's Performance in Bangladesh-An Application of Selected Camels Ratio' *Asian Institute of Technology School of Management, Thailand* (May 2012). Website: <www.pmbf.ait.asia/sites/default/files/report/report_jahidqbal.pdf> Accessed on 25 March 2014.

³⁶³ *The Bangladesh Bank Order, 1972* (President Order No.20, 1972). Art-7A (f), and *the Bank Company Act (BCA), 1991* (Act No. XIV of 1991). Sec- 44.

Currently there are 47 banks operating in Bangladesh. Of them 4 are State Controlled Banks, 4 are Development Financial Institutions, 30 Private Commercial Banks and 9 Foreign Commercial Banks. The BB, being the central bank is the main supervisory authority of banking sector.³⁶⁴

The following seven banks and one financial institute in Bangladesh have been fined in 2013 by the BB for not keeping client affidavits and also for not informing authorities of suspicious transaction in time.³⁶⁵

- i) Islami Bank Bangladesh Limited (IBBL) BDT Tk.20,00,000/-
- ii) Premier Bank Limited BDT Tk.20,00,000/-
- iii) BRAC Bank Limited BDT Tk.5,00,000/-
- iv) Mercantile Bank Limited BDT Tk.4,00,000/-
- v) Dutch Bangla Bank Limited (DBBL) BDT Tk.2,00,000/-
- vi) South East Bank Limited BDT Tk.2,00,000/-
- vii) Janata Bank Limited BDT Tk.2,00,000/-and
- viii) Bangladesh Investment Finance Corporation (BIFC) BDT Tk.1,00,000/-

5.3.1.2 Anti-Corruption Commission (ACC)

The Anti Corruption Commission (ACC) was formed on 23 February 2004 through the enactment of the Anti Corruption Commission Act 2004 and came into force on 9 May 2004. Although initially, it could not make the desired impact, but immediately following its reconstitution in February 2007, the

³⁶⁴ Mohammad Jahid Iqbal, 'Banking Sector's Performance in Bangladesh-An Application of Selected Camels Ratio' *Asian Institute of Technology School of Management, Thailand* (May 2012). Website: <www.pmbf.ait.asia/sites/default/files/report/report_jahidqbal.pdf> Accessed on 25 March 2014.

³⁶⁵ Website: <bdnews24.com published on 02 December 2014> Accessed on 15 December 2014.

ACC began working with renewed vigor and impetus duly acceding to the United Nations Convention against Corruption. The ACC is mandated as independent, self-governed and neutral entity. It consists of three commissioners; of them one as the chairman and all appointed by the President for a tenure of four years from the date of their appointment. While the commissioners function on full-time basis loses eligibility for reappointment on expiry of the term in their office. ML offences investigating authority is only ACC or the authorized persons on behalf of the ACC.³⁶⁶

5.3.1.3 Ministry of Finance (MoF)

The Finance Division coordinates with the Ministry of Law, Justice and Parliamentary Affairs concerning Anti Money Laundering Laws (AML)/ Counter Financing and Terrorism (CFT) laws including drafting regulations to the Money Laundering Prevention Order 2008 and the Money Laundering Prevention Act 2012.

5.3.1.4 Ministry of Home Affairs

To facilitate exchange of information and intelligence among FIUs, Bangladesh FIU has already signed 16 (Sixteen) MoUs with other FIUs. The MoUs with other FIUs are conducted by the Ministry of Home Affairs and Attorney General Office. To provide guidance for effective implementation of regime, a National Coordination Committee headed by the Honorable Finance Minister and a Working Committee headed by the secretary of Bank and Financial Institutions Division of Finance Ministry were formed consisting of representatives from all

³⁶⁶ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-9(1).

regulatory authorities, namely, Home Ministry, National Board of Revenue (NBR), Anti-Corruption Commission (ACC), Bangladesh Bank (BB) and Bangladesh Securities and Exchange Commission etc.

5.3.1.5 Attorney General Office

The Attorney General's Office, may confiscate or return any property situated in Bangladesh in order to comply with an order made by a court of a foreign State under a contract; similarly the Attorney General's Office may make a request to a foreign State for the purpose of complying with an order passed by a court in Bangladesh for confiscation or return of property under a contract or memorandum of understanding. Notwithstanding anything contained in any other law, any documents received from the appropriate authorities of any foreign State under the scope of mutual legal assistance, shall be admissible as evidence before the relevant court.³⁶⁷

5.3.2 Judicial Mechanisms

Judicial mechanism is an important part to prevent proliferation of money laundering in Bangladesh. Judicial mechanism may be discussed in two ways:

- i) Judicial Procedure and
- ii) Law Enforcement Agency

5.3.2.1 Judicial Procedure

The effective judicial procedure may play a vital role in preventing ML. The following procedures are being maintained to prevent ML in Bangladesh:

³⁶⁷ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-26(4)(5).

- i) ML activities and related offences are cognizable, non-compoundable and non-bailable.³⁶⁸ At the same time, the terrorism activities are also cognizable and non-bailable.³⁶⁹
- ii) Predicate offences considered as ML offences under the Money Laundering Prevention Act 2012. Any individual may provide information to file First Information Report (FIR) about ML and related occurrence to the police station.³⁷⁰
- iii) The investigating authority of such offences is only the ACC or the authorized persons of the ACC.³⁷¹

Money Laundering Court

The Special Judge presides over the court to settle the ML cases.³⁷² To fulfill the objectives of the Money Laundering Prevention Act (MLPA) 2012, all courts of sessions are regarded as ML court and all Session Judges are to be the justice of money laundering court. Session Judge may settle all cases under the MLPA, 2012 himself or he may send the case to any additional Session Judge under him for settlement.³⁷³

Tribunal

The Session Judge or Additional Session Judge will preside over the Tribunal and follow the procedure prescribed in chapter 23 of the CrPC if within the territorial jurisdiction which declared during the composition of the Tribunal.³⁷⁴

³⁶⁸ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-11.

³⁶⁹ *The Anti Terrorism (Amendment) Act, 2012* (Act No. 06 of 2012). Sec-39(1)(2).

³⁷⁰ *The Code of Criminal Procedure 1898(CrPC)* (Act No. V of 1898). Sec-154.

³⁷¹ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-9(1).

³⁷² *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012), Sec(10).

³⁷³ *The Criminal Law Amendment Act, 1958* (Act No. XL of 1958).Sec-3.

³⁷⁴ *The Anti Terrorism (Amendment) Act, 2012* (Act No. 06 of 2012). Sec-27(1).

Special Tribunal

The Special Tribunal may be established for special purpose (where the territory will be fixed) with the consultation of the Supreme Court, and the Session judge will preside over the court.³⁷⁵ In case of death sentence taking an approval is needed from High Court Division of the Supreme Court of Bangladesh.³⁷⁶

Supreme Court of Bangladesh

The Supreme Court of Bangladesh is the highest court of law in Bangladesh. It is composed of the High Court Division and the Appellate Division, and was created by Part VI Chapter I of the Constitution of Bangladesh adopted in 1972. The High Court Division hears appeals from lower courts and tribunals. It has also original jurisdiction in certain limited cases, such as writ applications under article 102 of the Constitution of Bangladesh, and company and admiralty matters. The Appellate Division has jurisdiction to hear appeals from the High Court Division. The Supreme Court is independent of the executive branch, and is able to rule against the government in politically controversial cases. Appeal will be allowed to High Court Division of the Supreme Court of Bangladesh against the judgment of the Tribunal in ML and related cases within 30 days.³⁷⁷

5.3.2.2 Law Enforcing Agency

The following organs or institutes are acting as law enforcement authority in preventing ML activities in Bangladesh:

- i) Bangladesh Financial Intelligence Unit (BFIU) of Bangladesh Bank

³⁷⁵ *The Anti Terrorism (Amendment) Act, 2012* (Act No. 06 of 2012), Sec-28(1)(2).

³⁷⁶ *Ibid.*, Sec-31(2).

³⁷⁷ *The Anti Terrorism (Amendment) Act, 2012* (Act No. 06 of 2012), Sec-31(1).

- ii) Anti Corruption Commission (ACC)
- iii) National Board of Revenue (NBR)
- iv) Police Department
- v) Border Guard Bangladesh (BGB)
- vi) Taxation and Custom Department

i) Bangladesh Financial Intelligence Unit (BFIU) of Bangladesh Bank

The FIU undertakes the role in supervising AML preventative measures. Financial Intelligent Unit (FIU) was established in Bangladesh Bank (BB) on 16 May 2007 for receiving, analyzing and disseminating Suspicious Transaction Reports (STRs) related to Money Laundering (ML), Terrorist Financing (TF) and Cash Transaction Reports (CTRs). Anti Money Laundering Division (AMLDD) is now working as a separate unit in the BB as Financial Intelligence Unit (BFIU).³⁷⁸ The BFIU has arranged a number of training programs, workshops, seminars and road-shows to create awareness among the staff of reporting organizations, regulatory authorities about ML and related issues.

ii) Anti Corruption Commission (ACC)

Anti-Corruption Commission (ACC) is an investigating organization. The Anti Corruption Commission (ACC) or the authorized persons on behalf of the ACC is the only ML offences investigating authority in Bangladesh.³⁷⁹ The ACC as a team, formed in the year 2009, has frequently uncovered operations of ML activities and related crimes. A Singapore court on 26 February 2013 directed a

³⁷⁸ *The Money Laundering Prevention Act, 2012* (Act No. 05 of 2012). Sec-24.

³⁷⁹ *Ibid*, Sec- 9(1).

consulting firm of the country to return to Bangladesh Tk 8 crore (US \$ 9.32 million) siphoned off by BNP chairperson Khaleda Zia's younger son Arafat Rahman Koko. Attorney General Mahbubey Alam appeared for the Bangladesh government at the Court No 10 of Singapore which ordered the laundered money back. The court order came following a case filed with it by Bangladesh's Anti-Corruption Commission (ACC) in 17 March 2009. Koko laundered the money to Singapore in 2004-2006 and deposited it with Fairhill Consulting Limited, a firm set up in the Southeast Asian country by Koko when the BNP-led four-party alliance was in power in 2001-2006. This is the second money laundering case in which the Bangladesh government has got the verdict in its favour. In November 2012, the ACC brought back around 20.41 lakh Singapore dollars (BDT Tk 13 crore) laundered by Koko and his associate. Then the money was transferred to Sonali Bank's Ramna corporate branch from Singapore on 23 November 2012. It is mentionable here that the ACC opened an account titled, 'Stolen Asset Recovery Account' with Sonali Bank to receive the amount in 2011.³⁸⁰

iii) National Board of Revenue (NBR)

The National Board of Revenue (NBR) is the taxation and customs authority of Bangladesh formed under the National Board of Revenue Order, 1972-President's Order No.76 of 1972. The NBR is the central authority for tax administration in Bangladesh. Administratively, it is under the Internal Resources Division (IRD) of the Ministry of Finance (MoF). MoF has 4

³⁸⁰ Available at <news.priyo.com/2012/11/22/politics-63203.html> Accessed on 20 December 2014.

Divisions, namely, the Finance Division (FD), the Internal Resources Division (IRD), the Banking Division (BD) and the Economic Relations Division (ERD). Each division is headed by a Secretary to the Government. Secretary, IRD is the ex-officer chairman of the NBR. The NBR is responsible for formulation and continuous re-appraisal of tax-policies and tax-laws in Bangladesh. The NBR is also responsible for negotiating tax treaties with foreign governments and participating in inter-ministerial deliberations on economic issues having a bearing on fiscal policies and tax administration.

The main responsibility of NBR is to mobilize domestic resources through collection of import duties and taxes, VAT and income tax for the government. Side by side with collection of taxes, facilitation of international trade through quick clearance of import and export cargoes has also emerged as a key role of NBR. Other responsibilities include administration of matters related to taxes, duties and other revenue related fees/charges and prevention of smuggling. Under the overall control of IRD, NBR administers the excise, VAT, customs and income-tax services consisting of 3434 officers of various grades and 10195 supporting staff positions.³⁸¹ The NBR also tries to track black money and illegal transaction through taxation and custom intelligence unit. Bulk cash smuggling cases are being prosecuted under section 16 of The Customs Act, 1969 and section 8(1) and 8(2) of The Foreign Exchange Regulation Act, 1947.

³⁸¹ The National Board of Revenue (NBR). Website: < www.nbr-bd.org > Accessed on 24 August 2014.

iv) Police Department

Police Department is administrated by Home Ministry. The Police, Railway Range, Metropolitan Police, Highway Police and Industrial Police provide services to all citizens and make Bangladesh a better and safer place to live and work to uphold the rule of law, to ensure safety and security of citizens, to prevent and investigate ML and other crimes, to bring offenders to justice, to maintain peace and public order. However, Bangladesh Army, Border Guard Bangladesh (BGB), Director General Forces Intelligence (DGFI) National Security Intelligence (NSI), Rapid Action Battalion (RAB), Coast Guard, Ansar and Village Defence Party (VDP) are also provided their service to prevent ML activities and related crimes in addition to their assigned duty to keep peace and security of Bangladesh.³⁸² However, major units within the police include the Criminal Investigation Department (CID) consisting of approximately over 1500 staff, Special Branch (Intelligence), Detective Branch (DB), training institutes and a number of metropolitan and regional police forces. The police officers are empowered to investigate ML and related crimes under sec 154 of Criminal Procedure Code (CrPC) of Bangladesh but not below the rank Sub Inspector.³⁸³

v) Border Guard Bangladesh (BGB)

The Border Guard Bangladesh (BGB) formerly known as the Bangladesh Rifles (BDR) is the oldest uniformed force in Bangladesh.³⁸⁴ It is a paramilitary force under the Ministry of Home Affairs. The BGB is primarily responsible

³⁸² Abdus Sobhan Sikder, Secretary, Ministry of Public Administration Government of Bangladesh, "Law and Order Maintenance system and Countering Terrorism in Bangladesh," presented in a seminar at Civil Service College, Bangladesh on 12 December 2011.

³⁸³ *The Anti Terrorism (Amendment) Act, 2012* (Act No. 06 of 2012). Sec-29(1).

³⁸⁴ The paramilitary force East Pakistan Rifles (EPR) was renamed Bangladesh Rifles (BDR) after liberation in 1971. The paramilitary force was further christened Border Guard Bangladesh (BGB) on 20 December 2010.

for the border security of the country, in Bangladesh the force is known as ‘The Vigilant Sentinels of the National Frontier.’ The BGB as a paramilitary force is entrusted with the responsibility to defend the 4,427 km border of the country. It is the first line of defence for the nation. The BGB boasts an illustrious past with rich traditions and a remarkable military history spanning over two centuries. During peacetime this force is also responsible for anti-smuggling operations, investigating cross border crime and extending governmental authority to remote and isolated areas. From time to time the BGB has also been called upon to assist the administration in the maintenance of internal law and order, relief and rehabilitation work after any kind of natural disaster. During wartime the BGB comes under the control of the Ministry of Defence as an auxiliary force to Bangladesh Army.³⁸⁵

5.4 Challenges Faced by Governmental Institutions Engaged for Limitation of Money Laundering Activities in Bangladesh

The government of Bangladesh enacted AML laws and the international community have taken various steps to prevent ML activities in Bangladesh. Besides, the launderers are seeking new ways to launder money, and to protect themselves from national and international AML laws and from their regulatory system. The launderers are taking benefit of technological development to conceal their earnings from illegal sources. The governmental institutions are facing the following challenges to limit ML activities and related crimes in Bangladesh:

³⁸⁵ Website: <en.wikipedia.org/wiki/Border_Guards_Bangladesh> Accessed on 28 August 2014.

5.4.1 Lack of Formal Banking System

The conventional and formal banking systems are not available everywhere in the world including Bangladesh. The formal banking system is also weak and unsafe in rural areas of Bangladesh. The procedural complicity and delays in payment of remittances is also another lacking in formal banking system. The launderers are taking advantages of delay service in payment of money of the formal banking in Bangladesh. They are using alternative way i.e. the underground *hundi* or *hawala* system, to transfer money and valuables outside of the formal banking system. The greatest use of the *hundi* or *hawala* system is to repatriate wages from expatriate Bangladeshi workers. Although banks have recently increased their speed and efficiency in making remittances, *hundi* remains a thriving system due to its ability to avoid taxes, customs duties and currency controls.³⁸⁶

5.4.2 Lack of Proper Identification

Banks and other FIs is the formal route of money transactions in Bangladesh. It is a challenging task to detect, and to prevent ML laundering activities in the banking and other financial sectors. The different fund transfer methods such as credit card, electronic cash transfer etc. are used by the launderers. It is difficult for the financial institutions to detect the launderer in such transactions. To detect the ML activities in the integration process, banks and other FIs are applying KYC policy. However, launderers look for loopholes in the KYC procedure in order to perform the integration process. From the regulatory viewpoint success of the KYC procedure is an important challenge to prevent ML activities. Weak legal system and political dishonesty remains an important issue to prevent ML activities in

³⁸⁶ Mahfuzur Rahman, *Money Laundering Protirodh* (3rd ed.; Borna Binnash, Dhaka, 2010). pp. 151-155.

Bangladesh. By using laundered money launderers try to convince the weak regulatory administration of a country. It is not always easy for banks and other FIs to check and take action against all the fictitious transactions. There is a need to support from the regulatory authorities like the BB, ACC, and from government administrations. Therefore, even though enough rules and laws exist, challenges remain to implement those rules in practice by the banks and other financial and non-financial institutions of Bangladesh.

5.4.3 Lack of Fund

The cost is an important challenge to adopt global AML policy. Most of the banks and other FIs are less interested to provide training and awareness programme in preventing proliferation of ML due to their main involvement in business and to earn profit. During the era of financial globalization, the FIs are more interested to invest in emerging economics in searching for profits. The launderers are taking opportunity of the free flow of fund around the globe to transfer funds from one region to another. In most cases they use shell companies to perform their intentions. Although it is possible for developed economies and large institutions to check such activities, however it is very costly for the developing economies and smaller banking firms. Therefore, it is an important challenge for the developing economies to adopt global AML polices. In a sense, it is also a challenge to the success of the global AML mechanism.

5.4.4 Lack of Regulatory Mechanisms

The existing loopholes in AML laws and their regulatory mechanisms would hamper Bangladesh's international trade. The launderers are taking advantages

of the inadequate measures of AML regulatory bodies in Bangladesh. The deficiencies of the regulatory mechanisms are discussed below:

- Inadequate measures to establish ML activities as criminal acts;
- Lack of adequate procedures to identify and freeze terrorist assets;
- Lack of provision for confiscation of funds laundered; and
- Absence of a fully operational and effectively functioning of BFIU of the BB.³⁸⁷

The government of Bangladesh should take proper initiative to amend the existing AML laws and to ensure proper implementing measure in preventing ML activities in Bangladesh.

5.4.5 Improper Awareness

Proper training and awareness may play an effective role in preventing ML activities in Bangladesh. Unawareness about the problem of ML among the common people is an impediment in having proper AML regime. People of Bangladesh, especially among the poor and illiterate, do not trust banks and prefer to avoid the lengthy paperwork required to complete a money transfer through banks or other FIs. The *hundi* or *hawala* system provides them same remittance service as a bank with little or no documentation and at lower rates and provides anonymity and security. Though the remittance through *hundi* or *hawala* system is a crime, many people do not treat it as a crime. Most of them are not aware about the harmful effects of the transactions through *hundi* or *hawala*.

³⁸⁷ Nazmul Ahsan, *The Financial Express*, Dhaka, Bangladesh (16 August 2012).

5.4.6 Weak Institutional Framework

A weak institutional framework is a threat to the process of preventing ML activities and related crimes. The following weaknesses are found in FIs:

- Financial Institutes (FIs) are yet to develop sufficient capacity to verify the identity and source of funds of their clients;
- The human resources are not adequate, skilled and trained enough to trace ML activities and related crimes;
- None of the banks or other FIs has AML software to monitor and report transactions of a suspicious nature to the BFIU of the BB; and
- The common form of corruption in the FIs such as bribery, negligence of duties, nepotism, embezzlement, deception and extortion.

The government of Bangladesh as well as the concerned authority of the respective banks or other FIs should take effective steps to overcome the above mentioned deficiencies.

5.4.7 Lack of Effective Administration

A skilled and powerful controlling body is required to govern a country. The launderers are taking advantages in absence of effective administration. Smuggling is a rampant activity in Bangladesh. ML functions are running smoothly through smuggling. Bangladesh has illegal black market channels for selling goods. Smuggled goods such as food items, computer parts, cellular phones, gold, and a wide range of imported consumer goods are routinely sold

through the black market. By dealing in cash transactions and avoiding customs duties and taxes, black market merchants offer better prices than those offered by regulated merchants. This problem has lessened due to liberalization policy of the government.

5.4.8 Misuse of Charitable Funds

A large number merely sixty thousands registered non-profit organizations in different names such as societies, associations, clubs, and companies are active in Bangladesh.³⁸⁸ At the same time, non registered non-profit organizations are also actively functioning in Bangladesh. The non-profit organizations are working for the poor, neglected, indigenous and disable people of Bangladesh. The organisations are collecting money for charitable purpose and often distributed funds to terrorist groups, for instance, Jamaat-ul-Mujahideen Bangladesh (JMB), thereby both enhancing the capability of disadvantaged people and boosting specific terrorist groups. However, there is no overall strategy to identify and address ML and the risks of terror financing through these organisations.

5.4.9 Gaming Activities

The launderers are using a number of games such as lottery, casinos, internet gambling and multi level marketing business etc. to launder money. The gaming activities are used to obscure the source of funds—e.g. buying, winning tickets from legitimate players; using casino chips as currency for criminal transactions; using online gambling to obscure the source of criminal proceeds;

³⁸⁸ Rezaul Karim Byron, “Law loopholes plugged.” *The Daily Star*, Dhaka (24 January 2012).

and earnings of abnormal profit in a short span of time by multi level marketing company. There is a need to add provisions in the existing AML laws to prevent such type of gaming activities.

5.4.10 Deployment of Experts

Deployment of experts in ML activities is a big concern in Bangladesh. The launderers deploy a team of experts like chartered accountant, attorney, banker, and businessman to disguise their illicit money and masquerade it as legitimate income with the charge or fee between 10-15% of the sum concerned. The launderers need the connivance of a banker to launder money. The proper and effective supervision of the concerned authority may control the deployment of experts in ML activities and related crimes.

5.5 Conclusion

The AML laws and its enforcement mechanisms do not seem sufficient in preventing ML activities and related offences in Bangladesh. There are certain problems faced by the respective enforcement authority in preventing ML activities namely-cooperative and non-inquisitive correspondent banks in under-regulated jurisdictions; false documentation (trade-based ML); offshore secrecy jurisdictions and tax havens; related-party and sham transactions (e.g. non-market pricing, over-billing and under-billing); shell and holding corporations; taking advantage of legal loopholes; and technological change (e.g. on-line banking, cell phones, etc.) combined with increasing volume of money/value transfers.

In order to solve these problems:

- * The money transfer process should be simplified.
- * Proper steps should be taken for mass awareness and education of people which include workshops, motivation rallies, awareness campaign, producing and disseminating posters, leaflets, and television and radio spots.
- * Proper steps should also be taken by the BFIU of BB for comprehensive training programs, updating the guidelines issued from time to time, training of trainers manual, other manuals and strengthening the ML preventing paraphernalia and implementing mechanism.
- * The government of Bangladesh should ensure transparency and accountability in administration, and enlarge the scope and opportunity for social justice and security to encourage the people to pay taxes willingly and refrain from illegal activities.
- * The BB should make an effective plan to transfer banking surveillance or supervision responsibilities and functions to a separate and independent agency to ensure transparency and uphold public confidence, keeping the monetary policy responsibility in the BB itself.

Chapter Six

General Conclusion

6.1 Introduction

Money laundering is presently a burning issue in Bangladesh. ML and related offences are increasing with the increase of illegal earnings of money or assets through crimes and corruptions. It hampers the economic growth and sometimes hinders the overall economic development of Bangladesh. The honesty, sincerity and keeping aloof from illegal activities are important to save Bangladesh from complex and dangerous effects of ML. The government of Bangladesh has some strategic deficiencies in preventing ML. These are:

- i) Lack of taking adequate measures by the government in identifying the areas, sources and modes of ML and related offences.
- ii) Lack of introducing update version of technology and techniques in detecting suspicious transactions of money or funds through banks and capital markets by the BFIU of BB.
- iii) Lack of improving co-operation and coordination between the AML institutions at national and international levels.
- iv) Lack of ensuring transparency and accountability in financial transactions through banks and capital market.
- v) Insufficient measures in ensuring transparency and accountability of any persons, institutions, organizations and the government, in receiving and using foreign aid and
- vi) Absence of adequate measures to stop taking percentage as a bribe in all national and international development works.

The government should improve the above deficiencies to limit the proliferation of money laundering in Bangladesh.

6.2 Findings of the Study

Money laundering is increasing day by day in Bangladesh. Now it is a big concern to the government of Bangladesh as well as the international community. The following discussion summarises the flaws, limitations and difficulties and puts a number of suggestions to prevent proliferation of money laundering in Bangladesh.

6.2.1 Preventing Proliferation of Money Laundering in Bangladesh

The following factors are to be taken into consideration to prevent proliferation of money laundering in Bangladesh.

- Money laundering is a barrier to economic development of Bangladesh. It hampers the national and international integrity and is also harmful to social and political culture. It also inspires the drug dealers, smugglers, terrorists, illegal arms dealers, corrupt public officials and others to operate and expand their criminal networks.
- It increases government's cost for law enforcement and health care expenditure.
- ML makes difficult to collect government tax which in turn reduces revenue.
- ML misleads asset and commodity prices and leads to a misallocation of resources through placement, layering and integration.
- ML impacts asset structure adversely and thus creates the risk of monetary instability for banks or other financial institutes.

- The micro economic effect of ML is usually evident in the private sectors. The launderers often use front or shell companies, for co-mingling their illicit proceeds with legitimate funds, and to hide the illegally achieved gains. Besides, the front or shell companies often subsidize their products and services below the market rates. Thus, the legitimate business falls in difficulties to compete against front or shell companies.
- ML makes a negative impact on the socio-economy which leads to transfer money from the market, government and citizens to criminals.
- It impacts on the moral strength of the people of a society and weakens collective ethical standards.
- ML impacts on the reputation of financial, non-financial and other institutions of a country. It is also a challenge to limit ML for the weak corporate governance.

6.2.2 Effectiveness of Anti Money Laundering Laws in Bangladesh

The existing AML laws, rules, regulations and guidelines do not seem adequate in preventing proliferation of money laundering in Bangladesh. The loopholes of existing AML laws and deficiencies in enforcement mechanisms makes difficult to ensure proper measures in preventing or controlling ML for the AML administration and regulatory bodies of Bangladesh. The launderers are taking advantage of the situation and involved in predicate offences such as malpractices, fraud, manipulation and acts of violence.

6.2.3 Governmental Interference

A proper and effective preventing measure of ML depends on the comprehensive AML laws and good governance, which may prevent the abuse of the legal process. The BB and ACC are the main organs to prevent or control ML in Bangladesh. The government control their activities by giving appointment in the post Governor and Deputy Governor of the BB and the Chairman and Members of the ACC and also by limiting their power and functions. If the government remains unconcerned in appointment of the said post and about their powers, functions and activities, the AML process will be rendered useless or futile or will bear no result. It is necessary to make the AML laws more effective to control both the launderers and administrative mechanism as well as ensure the sincere efforts of the government.

6.2.4 Insufficient Fund

It is very difficult tasks to control or prevent ML due to its volatile nature and connection at national and international levels. At the same time, costs are also an important factor to maintain and improving the AML mechanisms with the existing, new and emerging technology and policy. During the era of financial globalization, the financial institutions are more interested to invest in emerging economics in searching for profits. Due to high cost, the financial institutions are less interested to provide sufficient training, create awareness and preventing measures against ML and predicate offences.

6.2.5 Political Influence

Political influence is important for allowing or disallowing of whitening the black money in Bangladesh. The government of Bangladesh allowing legalising the undisclosed sums of money from many years, which is off the books, fixes a payment of a flat penalty at the rate of 10%. However, there is a multi-layered tax slabs under the tax laws of Bangladesh. This facility of making black money white is likely to take effect in the coming fiscal years, despite strong reservations of the various bodies representing the business community. Furthermore, it is a serious question how exactly does the government intend to legalise illegally earned money as a signatory to international AML statutes. The undisclosed sums are usually associated with corruption, crime or other illegal activities.

6.2.6 Lack of Awareness

A large number of people in Bangladesh are involved with the business of Multi Level Marketing (MLM) companies to earn abnormal profits in a short span of time. The people usually invest a huge amount of money or fund or capital in these sectors due to lack of awareness. They do not have clear idea or concept about MLM business. The BB has warned the people against investing in MLM companies. The ACC has filed cases against several companies and the BB, central bank of Bangladesh has stopped their operations. However, they are continuing their business under different names.

6.2.7 Procedural Weakness

People are moving from one place to another and one country to another for work, business or profession, medical treatment, tourism, and for other necessities. During the time of traveling, it is usual for some people to carry excess money without the consent of proper authority and thereby violating the rules of customs to avoid lengthy procedural complicacy and to save time.

6.2.8 Money Laundering as a Crime

A strong relationship prevails between ML and criminal activities. Dirty money is acquired by crime and invested in criminal activities to earn more. ML is a foundation of criminal activities organ and white collar crimes. Massive influxes of dirty money—primarily create false demand and then ruin the reputation and credibility of financial institutions and other related industries.

6.2.9 Weakness in Implementation

A good business practice is to know customers and their business patterns. It reduces the attempt of ML to some extent. In the developed and developing countries FIs is the most widely used route for ML. Therefore, in detecting ML in the integration process ‘know your customer’ policy is important. However, launderers look for loopholes in the KYC procedure in order to perform ML activities by using front or shell companies, false instruments and accounts. The success of KYC procedure is a vital challenge in limiting ML in Bangladesh.

The implementation of existing AML laws is a big challenge for financial and non-financial institutions as well as other regulatory administrations

due to procedural lacking and political influences. In many cases, launderer tries to convince weak regulatory administration by using their laundered money. So, it is not always easy for a developing country like Bangladesh to check ML and to take action against all the fictitious transactions. There is a need to support by the proper authorities like the BB, ACC, the government police administration and the judiciary of Bangladesh to prevent ML activities and related crimes.

6.2.10 Technological Development

Money launderers continuously look for an innovative process—using financial, non-financial and other channel with the use of modern technology. For instant, mobile phones have opened up a new opportunity by creating several online identities. One can pay bills and wire digital money via cell phone these days, operate as a typical money service business like ‘BIKASH’. A person first goes to a phone centre and can transfer money into a digital format, then can wire transfer anywhere. In turn the person can redeem digital money in cash by secret pin number provided by any ‘BIKASH’ centre within a short span of time. Thus the related banks or company cannot manage nor do not keep sufficient information of money sender and receiver, and the launderers take advantage of this system of money transfer. The government of Bangladesh should take proper initiatives from time to time to amend the existing AML laws parallel with the development of technology in order to control ML activities and related crimes effectively.

6.2.11 Money Laundering as a Dirty Game

ML is a dirty game. The money launderers very consciously play a dirty game with the economy and society of a country. For instance, in the two periods of share market scandal in Bangladesh common people invested their money in the share market and became great losers. Giving them hope and aspiration from behind the curtain the ML extracted more money from them which showed a virtual healthy economy. When enough money was accumulated the launderers withdrew the money from the market thus leaving the people at a poor stage at both social and economic levels. Sometimes, as in the case of Share Market Scandal in Bangladesh, the government could have taken initiative to punish the money launderer thereby taking support of the common people and help regain a standard economy. However, the failure on the part of the government only poses the question as to whether it sides with the ML for its own gain or not.

6.3 Suggestions for the Better Management to Prevent Money Laundering in Bangladesh.

In the light of the above mentioned problems and findings, a set of suggestions have been mentioned in the research for better management to prevent ML activities and related offences in Bangladesh, which are enumerated below:

6.3.1 Policy Measures of Bangladesh Bank

Bangladesh Bank, the central bank of Bangladesh is working to prevent ML. The government of Bangladesh should take the following measures to ensure the performance of the BB more effective in preventing or controlling ML activities:

- The functions of the BB are needed to be strengthened, impartial and transparent by following the proper system of appointment of the Governor and Deputy Governor on the basis of impartiality;
- The independence of the BB may be ensured by giving it powers to recruit its own personnel and to exercise administrative control over its staff;
- The power of the BB should be increased and more effective to monitor the cases of violation of the code of conduct, the provision of the AML laws and irregularities;
- There should be a central database system following the existing and modern technology that will contain necessary information about suspected customers that will facilitate the identification of ML attempts;
- Application of law and procedure should be ensured and strengthened to stop political influence and dishonesty;
- The BB should have a separate budget or fund as per their requirement for AML activities especially for training and awareness;
- The BB should discuss with all financial entities before issuing any circular or making any change in the AML Acts;
- The BB should ensure more frequent supervision. Working process of the BB should be automated and it should have more effective way of communication like E-mail, internet etc;
- The BB should include required reporting agencies in order to supervise the effectiveness of the AML policy;

- The BB should prepare/amend separate guidance notes for the reporting organizations. It should issue separate AML guidance notes to regulate new and emerging technology based payment system;
- The BB should enhance legal tools to support investigation of cases that involve in cross border elements;
- The BB should ensure sufficient logistics support and issue separate guidance notes to improve quality and quantity of CTRs and STRs for banks and capital market;
- The BB should propose Institute of Chartered Accountants of Bangladesh (ICAB) to incorporate AML issues on it; and
- A mechanism for the BFIU of BB should be established to use and share financial database and intelligence reports of other government agencies namely Bangladesh police, National Board of Revenue (NBR), Emigration Authority, Election Commission (EC) etc.
- The BFIU of BB should be introduced new and modern systems and update version of technology to maintain a specific standard operating procedures in line with contemporary technologies and techniques used in ML and their methods of operation.

6.3.2 Policy Measures for Strengthening Financial Sector

The following policy measures may be considered as a part of reform processes of strengthening the financial sector:

- i) The existing tax collection procedure should be made very simple for general people. Tax holiday in investment declared by the government should be curtailed. The rate of income tax and VAT should be reduced.
- ii) The civil servant related to tax collection should be honest with high moral integrity.
- iii) A provision of heavy penalties, including jail sentence should be included for those large entrepreneurs, industries and corporations who are involve with tax evasion.
- iv) The functions of ongoing financial sectors should be made transparent, the statement of wealth and assets of the chairman, member of the board of directors, employees and other related persons of those sectors should be made public, at the time of appointment and on the expiry of their assignment.
- v) The transaction of foreign currency through banking and other channels should be brought under active surveillance of BB, the central bank Bangladesh. Bank loan defaulters should not be allowed to participate in the elections and issued passport to go outside the country. Bank loan defaulters should be given and ensured 10-15 years of rigorous imprisonment through summary trial. The competent authority should publish the list of the loan defaulters on a periodic basis in the local and national dailies.
- vi) The hidden wealth earned by the corruption is uncovered and invested in the industrial sectors both in private and public; the effective measures should be taken in this regard.

- vii) Proper national policy should be adopted to stop smuggling and trafficking.
- viii) Practical steps should be taken to make a standard interest rate, reduce large fiscal deficit, and adjust exchange rate of the currency following at least to the neighboring country's level for reversing capital flight from the country. For ensuring a stable macroeconomic environment in the country, policies should be adopted to make exchange rate stable, keep the fiscal deficit at a tolerable limit, and allow the interest rate to be determined by market forces.
- ix) The government should pursue austere measures at all levels of current purchase and consumption to avoid unnecessary expenditure.
- x) The financial and capital market should be developed to make avoidable risk free instruments which will induce domestic as well as foreign investors to invest their capital through diversifying their portfolio investment in the country.
- xi) The overall action of the law enforcing agencies should be properly monitored. Strict maintenance of law and order situation should be ensured.

6.3.3 Policy Measures of Capital Flight

The capital flight is a part of hidden economy. Proper policy formulation and its strict application might check illegal movement of capital from Bangladesh.

If the financial system is developed, capital account is liberalized, tax evasion and hidden economic activities are reduced considerably, and then the growth rate of GDP may be increased up to an optimum level. The government will also be able to mobilize more resources from local sources and reduce its

dependence on foreign aid. In view of the above, the following policies may be considered in order to prevent illegal movement of the capital flight.

- The Anti-Money Laundering Department (AMLDD) was established in the BB in 2002 to prevent ML activities through financial channel. The adopted AML measures should be strengthened to make this department fully active and operative in line with other countries' experiences in restraining the capital flight. Co-ordination among the BB, commercial banks, non-bank financial institutions, the ACC and law enforcement agencies is very much necessary. A central data warehouse may also be set up in the BB with all information regarding ML activities and illegal movement of capital flight.
- Sound financial sector is an essential precondition in addition to strong macroeconomic fundamentals for liberalization of capital account transactions. Bangladesh may embark upon gradual shifting to capital account convertibility, which may have a positive impact to control illegal capital flight to some extent.
- An indirect instrument requires a formal payment system and transmission of interest rate for maintaining a sound monetary policy.
- Adequate regulations and supervisions are necessary for guiding the banking system to work in a more efficient way. In this regard, the BB may consider transferring banking surveillance or supervision responsibilities and functions to a separate and independent agency to ensure transparency and uphold public confidence, keeping the core monetary policy responsibility in the central bank itself.

- The BB may actively consider embarking upon a gradual shifting to capital account convertibility, which may help efforts to detain illegal movement of capital flight to some extent.
- The BB may also actively consider influencing the illegal foreign exchange transactions by purchasing huge amount of foreign exchange, thereby downsizing the transactions in the illegal foreign exchange transactions.
- Lastly, government should improve the services sectors, ensure the transparency and accountability in administration, and enlarge the scope and opportunity for social justice and security, so that the people can pay taxes willingly and refrain from illegal activities.

6.3.4 Guidelines for Foreign Exchange Transactions

The foreign exchange transaction guideline is very important to ease the present capital control measures, to raise the long run economic efficiency, and to attract the domestic as well as foreign direct investment. Government may actively consider gradual movement toward capital account convertibility. In this regard, a timetable for convertibility may be fixed on suitability basis and necessary institutional and financial reforms may be resumed.

6.3.5 International and Regional Cooperation

The government of Bangladesh has started to cooperate with other countries on the basis of bi-lateral treaties with regard to extradition of offenders. The list of 'extraditable offences' mentioned in the Extradition Act, 1974 be reviewed to include the United Nations Convention Against Corruption (UNCAC) articulation. With regard to mutual legal assistance Bangladesh has not

included adequate legal provisions to ensure widest mutual legal assistance with other UNCAC signatory states. A few provisions for seeking assistance include those for evidence through setting up commissions in order to examine witnesses abroad, entering into agreements with foreign countries to control ML. However, there are limited options for seeking cooperate and responding to requests of mutual legal assistance. As such domestic legislation in these areas still requires a number of amendments and improvements in order to compatible with the provisions of UNCAC.

6.3.5.1 International Cooperation

The international organization such as the WB, IMF and FATF may assist by identifying the strategic deficiencies of AML measures, and providing technical and capacity building assistance in institutionalizing strengthening and sustaining the AML measures. The civil servant of Bangladesh may work with the international cooperation and review group and other relevant international bodies to address the gaps and deficiencies in preventing or controlling ML. The government should improve the relation of mutual legal assistance and other form of cooperation with the international community.

6.3.5.2 Regional Cooperation

The government should improve the regional relation and cooperation by taking membership of regional AML organization. At the same time, dialogue and collaboration between national and regional organization may provide technical and legal assistance in preventing ML. The formal cooperation and collaboration between the BFIU of BB and the FIUs of other countries may

strengthen information and intelligence sharing and legal assistance in preventing or controlling ML. The technical and application of practical knowledge of AML mechanisms should be improved.

6.3.6 Strengthening the Prevention and Detection Policy of Money Laundering

The earning/acquiring property through illegal ways and the proceeds of crimes are considered as ML in Bangladesh under the Money Laundering Prevention Act, 2012(MLPA). The offences like theft, robbery, dacoity, cheating, forgery etc. which are well defined in the Penal Code, can also qualify as an act of ML. The MLPA, 2012 focuses on banks and financial institutions, and as such it does not address other trade based ML i.e. other business establishments like property developers, high value dealers of jewelry and car dealers. The BFIU is entrusted with receiving, analysing and disseminating information to detect suspicious transactions as well as to trace, and refer cases for prosecution to the ACC. The BB should take steps to upgrade the current data base and intelligence analysis system to prevent ML. Finally, the reform regime and its implementation framework must be entrenched in the will of the stakeholders, both public and private, including participation of general people.

6.3.7 National Strategy and Corresponding Policies

The government of Bangladesh has introduced a set of organs against ML and related offences, which include both regulatory and operational measures. The government needs to conduct a comprehensive national ML and related crimes vulnerability and threat assessments via incorporation of standard tools. AML

strategic policy requires a culminate assessment of social vulnerabilities, threats and risks posed by ML and related crimes; existing AML capacity and capability; and other features of the current environment. AML strategy ought to address existing and emerging threats and techniques of ML should be reviewed regularly. AML policy and strategy may serve as an excellent tool for building shared values and common understanding among all actors of the AML initiative. There should be a national strategic policy compliant with the revised FATF recommendations and other popular guidelines.

6.3.7.1 Legislation

The AML laws require to be amended from time to time to develop and improve the effectiveness of the existing regulations, directives, and working systems that support the application of law in the line of international standards and requirements.

6.3.7.2 Comprehensive Reporting

The BFIU of the BB works towards comprehensive reporting mechanism that enables all entities and regularly provides reports under AML laws. Such a mechanism may engage and raise awareness among reporting entities and other stakeholders and facilitate basic reporting infrastructures. It may provide technical training on identifying and reporting suspicious transactions, also allows for compliance inspections and supervision by the BFIU of BB and ACC along with encourage a sense of vigilance towards ML and their operating methods.

6.3.7.3 Capacity Building

The capacity of the government is very important in preventing proliferation of money laundering. The government and the regional and global community may take effective initiative to build up capacity of the AML authority to prevent ML. The government should continue and fortify capacity building for all relevant authorities e.g. law enforcers and investigators and strengthen awareness-raising schemes both general and specialized, for the private sector, nonprofit organizations, media, and the general public, about the nature, modes, and impacts of ML and related offences. It should optimize AML information technology structure by developing a system meeting international standards.³⁸⁹ A regular specialized training curriculum should be designed and used. The curriculum should be streamlined based on to law enforcement and investigation. There is a need to introduce awareness and training programme on ML in existing professionals training institutions.³⁹⁰

6.3.7.4 Cooperation and Coordination

The cooperation and coordination between Bangladesh and other countries including regional and international organisations are necessary to prevent ML and related offences. The authority should take effective initiatives to establish information and intelligence sharing platforms for each relevant authority. Also establish a formal forum to set up of permanent national AML task force for

³⁸⁹ For instance, the United Nations Office on Drugs and Crime's (UNODC's) goAML software.

³⁹⁰ For instance, The Police Training Academy, Public Administration Training Centre (PATC), Judicial Administration Training Institute (JATI), Bangladesh Bar Council, Law Commission of Bangladesh.

risks identification and domestic co-ordination is required to improve the AML policies. Moreover, Bangladesh is also a member of some regional and international AML organizations such as APGML and Egmont Group. There is a need to get membership of other regional and international organizations where Bangladesh is not a party, for instance, FATF.

6.3.7.5 Supervision of Regulatory Bodies

Bangladesh Bank and the ACC are the main regulatory and supervisory body in preventing or controlling ML in Bangladesh. The BFIU of BB should work in collaboration with the ACC, consistently conduct inspections and ensure compliance under the AML laws by observation of international standards, including balancing control and facilitation and maintaining privacy standards, transparency, and accountability.

6.3.7.6 Negotiation

Negotiation could play an important role to solve the dispute related to ML activities. India generally solves their ML disputes, outside the court or by following other than the judicial procedure or by negotiation with the respective government authority on case to case basis with charging penalties to avoid any kind of social, cultural, political, and economic impacts. The government of Bangladesh may include a provision of Alternative Dispute Resolution (ADR) in the Money Laundering Prevention Act 2012 to get a better result in preventing proliferation of money laundering in Bangladesh.

6.4 Conclusion

Money laundering is considered as a criminal and punishable offence in Bangladesh. The government of Bangladesh needs to establish strong control over different financial, non-financial and other related organs in order to prevent ML activities and related crimes. However, it is difficult to ensure any financial control in an overpopulated country like Bangladesh. The social demands, economic situation, political culture, and the gap of AML laws, inadequate supervising and preventing measures of financial and nonfinancial institutions as well as government preventing mechanism are considered as important factors for proliferation of money laundering in Bangladesh. The general publics of Bangladesh have become familiar with the ML issue—after passing the Anti Money Laundering Act 2002. ML restrains the stability of economic growth, enhances crime and corruption and destroys the social peace and security. However, it is very difficult to assess the consequences of proliferation of money laundering in an over populated and developing country. The maintenance of low inflation and prudent financial sector management, including institutional reforms by the government, are necessary to limit ML activities. At many times political influence generates huge illegal income, whether from the willful default of bank loans, or from corruption in tax administration, leakage in public development expenditures and illegal financial deals in the running of state-owned enterprises.

The powers of the BB and ACC of Bangladesh regarding all aspects of preventing measures to ML should be increased and strictly exercised.

The independence, transparency and accountability of these organs should be ensured first to exercise their powers without any political pressures. Providing training to concerned persons and to the ML preventing authorities may develop the situation. The existing AML laws should be amended from time to time. In this regard, the members of the civil society and the media can play an important role to seek public opinion from the conscious people of the society to improve existing ML preventive mechanisms. Besides, for creating an effective and transparent system in preventing ML, the environment of tolerance and respect for the values of socio-economic and national stability should be maintained through awareness programme arranged by government. Public awareness in general is necessary to understand the scope and effects of ML. A course on ML activities and related crimes should be included in the syllabi/syllabuses of school, college and university education of Bangladesh to build up awareness about the consequences of ML and related crimes, so that the future generation does not get involved in this malpractice. The effective role of national and international organizations in monitoring the implementation of AML laws as well as other measures may bring better results in preventing ML in Bangladesh. Above all, there is a need to introduce strong vigilant mechanism in judiciary to pronounce harsh and exemplary punishment to the criminals connected to ML, so that judiciary would properly adjudicate suits concerning ML, and administrative authority would create awareness and encourage people to refrain from involving in activities related to ML.

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Enactments

1. Anti-Corruption Commission Act, 2004 (Act No.05 of 2004)
2. Anti-Corruption Commission Rules, 2007
3. Administrative Tribunal Act, 1980 (Act No.vii of 1981)
4. Anti-Terrorism Act, 2009 (Act No.16 of 2009)
5. Anti Terrorism (Amendment) Act, 2012(Act No.06 of 2012)
6. Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972)
7. Banking Companies Act, 1991 (Act No. XIV of 1991)
8. The Companies Act, 1994 (Act No. XVIII of 1994)
9. Bank Deposit Insurance Act, 2000 (Act No.18 of 2000)
10. Criminal Law (Amendment) Act, 1958 (Act No. XL of 1958)
11. The Negotiable Instruments Act, 1881(Act No. XXVI of 1881)
12. The Bankers' Book Evidence Act, 1891(Act No. XVIII of 1991)
13. Foreign Exchange Regulations Act, 1947 (Act No. VII of 1947)
14. Financial Institution Act, 1993 (Act No.27 of 1993)
15. Money Loan Court Act, 2003 (Act No. 8 of 2003)
16. Micro Credit Regulatory Authority Act, 2006 (Act No. 32 of 2006)
17. Money Laundering Prevention Act,2012 (Act No.05 of 2012)
18. The Customs Act, 1969 (Act No. IV of 1969)
19. The Evidence Act, 1872 (Act No. I of 1872)
20. The Extradition Act ,1974 (Act No LVIII of 1974)
21. The Code of Civil Procedure, 1908 (Act No. V of 1908)

22. The Government Servants (Special Provisions) Ordinance, 1979 (Ordinance No. XI of 1979)
23. Registration Act, 1860 (Act No. XXI of 1860)
24. Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (Ordinance No. XLVI of 1961)
25. Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978)
26. Foreign Contributions (Regulation) Ordinance, 1982 (Ordinance No. XXXI of 1982)
27. The Code of Criminal Procedure, 1898 (Act No. V of 1898)
28. Microcredit Regulatory Authority Act, 2006 (Act No. 32 of 2006)
29. Penal Code, 1860 (Act No. XLV of 1860)

Appendices

Appendix One

Money Laundering Prevention Act, 2012
Bangladesh Gazette Extraordinary Published by the authority
Monday, 20 February, 2012
Bangladesh Parliament Dhaka, 20 February, 2012 /08 Falgun, 1418

The following Act of Parliament received the assent of the President on 20 February, 2012 (08 Falgun, 1418) and is hereby published for general information:- **Act No. 5 of 2012**

An Act to repeal the existing Act and Ordinance regarding the prevention of money laundering and to reenact a law relating thereto

Whereas it is expedient and necessary to reenact a law regarding the prevention of money laundering and other offences connected therewith including punishment thereof and the matters ancillary thereto by repealing the existing Act and Ordinance relating thereto;

Therefore, it is hereby enacted as follows:-

1. Short title and commencement.— (1) This Act may be called the Money Laundering Prevention Act, 2012. (2) It shall be deemed to have come into force on 3 Magh, 1418 BE/16 January, 2012 AD.

2. Definitions.— Unless there is anything repugnant in the subject or context, in this Act –

(a) “smuggling of money or property” means-

(i) transfer or holding money or property outside the country in breach of the existing laws in the country; or

(ii) refrain from repatriating money or property from abroad in which Bangladesh has an interest and was due to be repatriated; or

(iii) not bringing into the country the actual dues from a foreign country, or paying to a foreign country in excess of the actual dues;

(b) “money or value transfer service” means a financial service in which the service provider receives currency, cheques, other financial instruments (electronic or otherwise) in one location, and provides the beneficiary with the equal value in currency or financial instruments or any other means in a different location;

(c) “proceeds of crime” means any property obtained or derived, directly or indirectly, from a predicate offence or any such property retained or controlled by anybody;

(d) “freeze” means any action taken by the competent authorities pursuant to this Act by which any property is brought within the control of the relevant authorities or the court on a temporary basis and the property shall be disposed of by taking a final decision by the court regarding confiscation of the property;

(e) “non-profit organization/institution” means any institution registered under section 28 of the Company Act, 1994 (Act XVIII of 1994);

- (f) “financial instrument” means all papers or electronic documents which have a financial value;
- (g) “financial institution” means a financial institution defined under section 2(b) of the Financial Institutions Act, 1993 (Act No. XXVII of 1993);
- (h) “court” means the court of a special judge;
- (i) “attachment” means any action taken by the court pursuant to this Act by which any property is restrained or held by the relevant authorities or the court on a temporary basis and the property shall be disposed of by taking a final decision by the court;
- (j) “customer” means any person or persons or entity or entities that may be defined by Bangladesh Bank from time to time;
- (k) “trust and company service providers” means any persons or business institution that is not defined in any other laws and provides with any of the following services to any third party:-
- (1) to act as an agent of establishing any legal entity, (2) to act as or appoint someone to act as a director, secretary of any legal entity or act as a partner in a partnership business, or perform other responsibilities in an equivalent position, (3) to act as a registered agent for any legal entity, (4) to act as or appoint someone to act as a trustee of an express trust, (5) to act as or appoint someone to act as a director instead of a nominee shareholder or any other person;
- (l) “investigation agency” means the Anti Corruption Commission established under the Anti Corruption Commission Act, 2004 (Act No. V of 2004); and any officer of the Commission authorized in this behalf by it to investigate or notwithstanding anything contained in any other law, it shall also include any officer of any other investigation agency; undering Prevention Act
- (m) “cash” means any currency recognized by a country as being the authorized currency for that country, including coins, paper currency, travelers” cheques, postal notes, money orders, cheques, bank drafts, bearer bonds, letters of credit, bills of exchange, credit card, debit card or promissory notes;
- (n) “disposal” means the sale of property which is degradable, perishable or unsuitable for use after a certain time, or the destruction of property which falls within properties suitable for destruction under any other law or it shall also include any legal transfer of property by means of an open auction;
- (o) “confiscation” means the permanent transfer of the title of any property in favour of the State pursuant to a court order made under section 17 ;
- (p) “Bangladesh Bank” means Bangladesh Bank established under the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972);
- (q) “insurer” means an insurer defined under section 2(25) of the Insurance Act, 2010 (Act No. XIII of 2010);
- (r) “non government organization” means the institutions authorized or registered under the Societies Registration Act, 1860 (Act No. XXI of 1860), the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (Ordinance No. XLVI of 1961), the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978), the Foreign Contributions Regulation Ordinance, 1982 (Ordinance No. XXXI of 1982), and the Microcredit Regulatory Authority Act, 2006 (Act No. XXXII of 2006) which-
- (i) receive fund (loan, grant, deposit) from local sources or provides with fund to others; and/or

- (ii) receive any kind of foreign donation or loan or grant;
- (s) “foreign currency” means any foreign exchange defined under section 2(d) of the Foreign Exchange Regulation Act, 1947 (Act No. VII of 1947);
- (t) “bank” means a bank company defined under section 5(o) of the Bank Companies Act, 1991 (Act No. XIV of 1991) and it shall also include any other institution designated as a bank under any other law;
- (u) “money changer” means any person or institution approved by Bangladesh Bank under section 3 of the Foreign Exchange Regulation Act, 1947 (Act No. VII of 1947) for dealing in foreign exchange transactions;
- (v) “money laundering” means –
 - (i) knowingly moving, converting, or transferring proceeds of crime or property involved in an offence for the following purposes:-
 - (1) concealing or disguising the illicit nature, source, location, ownership or control of the proceeds of crime; or
 - (2) assisting any person involved in the commission of the predicate offence to evade the legal consequences of such offence;
 - (ii) smuggling money or property earned through legal or illegal means to a foreign country; (iii) knowingly transferring or remitting the proceeds of crime to a foreign country or remitting or bringing them into Bangladesh from a foreign country with the intention of hiding or disguising its illegal source; or (iv) concluding or attempting to conclude financial transactions in such a manner so as to reporting requirement under this Act may be avoided; (v) converting or moving or transferring property with the intention to instigate or assist for committing a predicate offence; (vi) acquiring, possessing or using any property, knowing that such property is the proceeds of a predicate offence; (vii) performing such activities so as to the illegal source of the proceeds of crime may be concealed or disguised; (viii) participating in, associating with, conspiring, attempting, abetting, instigate or counsel to commit any offences mentioned above;
- (w) “reporting organization” means –
 - (i) bank;
 - (ii) financial institution;
 - (iii) insurer;
 - (iv) money changer;
 - (v) any company or institution which remits or transfers money or money value;
 - (vi) any other institution carrying out its business with the approval of Bangladesh Bank;
 - (vii) (1) stock dealer and stock broker, (2) portfolio manager and merchant banker, (3) securities custodian, (4) asset manager;
 - (viii) (1) non-profit organization, (2) non government organization, (3) cooperative society;
 - (ix) real estate developer;
 - (x) dealer in precious metals or stones;
 - (xi) trust and company service provider;
 - (xii) lawyer, notary, other legal professional and accountant; (xiii) any other institution which Bangladesh Bank may, from time to time, notify with the approval of the Government;
- (x) “real estate developer” means any real estate developer or its officers or employees or agents defined under section 2(15) of Real Estate Development and

Management Act, 2010 (Act No. 48 of 2010) who are engaged in constructing and buying and selling of land, house, commercial building and flat etc.;

(y) “entity” means any kind of legal entity, statutory body, commercial or non commercial organization, partnership firm, cooperative society or any organization comprising one or more than one person;

(z) “suspicious transaction” means such transactions –

(i) which deviates from usual transactions;

(ii) of which there is ground to suspect that,

(1) the property is the proceeds of an offence, (2) it is financing to any terrorist activity, a terrorist group or an individual terrorist;

(iii) which is, for the purposes of this Act, any other transaction or attempt of transaction delineated in the instructions issued by Bangladesh bank from time to time;

(aa) “cooperative society” means an institution established under section 2(20) of the Cooperative Societies Act, 2001 (Act No. XLVII of 2001) which is involved in receiving deposits and providing loans;

(bb) “property” means –

(i) any type of tangible, intangible, moveable, immoveable property; or

(ii) cash, any deed or legal instrument of any form including electronic or digital form giving evidence of title or evidence of interest related to title in the property which is located within or outside the country;

(cc) “predicate offence” means the offences mentioned below, by committing which within or outside the country, the money or property derived from is laundered or attempt to be laundered, namely:-

(1) corruption and bribery;

(2) counterfeiting currency;

(3) counterfeiting deeds and documents;

(4) extortion;

(5) fraud;

(6) forgery;

(7) illegal trade of firearms;

(8) illegal trade in narcotic drugs, psychotropic substances and substances causing intoxication;

(9) illegal trade in stolen and other goods;

(10) kidnapping, illegal restrain and hostage taking;

(11) murder, grievous physical injury;

(12) trafficking of women and children;

(13) black marketing;

(14) smuggling of domestic and foreign currency;

(15) theft or robbery or dacoity or piracy or hijacking of aircraft;

(16) human trafficking;

(17) dowry;

(18) smuggling and offences related to customs and excise duties;

(19) tax related offences;

(20) infringement of intellectual property rights;

(21) terrorism or financing in terrorist activities;

(22) adulteration or the manufacture of goods through infringement of title;

(23) offences relating to the environment;

(24) sexual exploitation;

(25) insider trading and market manipulation using price sensitive information relating to the capital market in share transactions before it is published for general information to take advantage of the market and attempting to manipulate the market for personal or institutional gain;

(26) organized crime, and participation in organized criminal groups;

(27) racketeering; and

(28) any other offence declared as predicate offence by Bangladesh Bank, with the approval of the Government, by notification in the official Gazette, for the purpose of this Act.

(dd) “special judge” means a special judge appointed under section 3 of the Criminal Law Amendment Act, 1958 (Act No. XL of 1958);

(ee) (1) “stock dealer and stock broker” means an institution defined under rule 2(i) and (j) of the Securities and Exchange Commission (Stock Dealer, Stock Broker and Authorized Representative) Rules, 2000; (2) “portfolio manager and merchant banker” means an institution defined under rule 2(f) and 2(j) of the Securities and Exchange Commission (Merchant Banker and Portfolio Manager) Rules, 1996; (3) “securities custodian” means an institution defined under rule 2(j) of the Securities and Exchange Commission (Security Custodial Service) Rules, 2003; (4) “asset managers” means an institution defined under rule 2(s) of the Securities and Exchange Commission (Mutual Fund) Rules, 2001; (ff) “High Court Division” means the High Court Division of the Bangladesh Supreme Court.

3. Act to override other laws. - Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall, subject to the provisions of section 9, have effect.

4. Offence of money laundering and punishment.—(1) For the purposes of this Act, money laundering shall be deemed to be an offence. (2) Any person who commits or abets or conspires to commit the offence of money laundering, shall be punished with imprisonment for a term of at least 4(four) years but not exceeding 12(twelve) years and, in addition to that, a fine equivalent to the twice of the value of the property involved in the offence or taka 10(ten) lacks, whichever is greater. (3) In addition to any fine or punishment, the court may pass an order to forfeit the property of the convicted person in favour of the State which directly or indirectly involved in or related with money laundering or any predicate offence. (4) Any entity which commits an offence under this section shall be punished with a fine of not less than twice of the value of the property or taka 20(twenty) lacks, whichever is greater and in addition to this the registration of the said entity shall be liable to be cancelled. (5) It shall not be a prerequisite to charge or punish for money laundering to be convicted or sentenced for any predicate offence.

5. Punishment for violation of an order for freezing or attachment.—Any person who violates a freezing or attachment order issued under this Act shall be punished with imprisonment for a term not exceeding 3 (three) years or with a fine equivalent to the value of the property subject to freeze or attachment, or with both.

6. Punishment for divulging information.— (1) No person shall, with an ill motive, divulge any information relating to the investigation or any other related information to any person, organization or news media. (2) Any person, institution or agent

empowered under this Act shall refrain from using or divulging any information collected, received, retrieved or known by the person, institution or agent during the course of employment or appointment, or after the expiry of any contract of service or appointment for any purpose other than the purposes of this Act. (3) Any person who contravenes the provisions of sub-sections (1) and (2) shall be punished with imprisonment for a term not exceeding 2 (two) years or a fine not exceeding taka 50 (fifty) thousand or with both.

7. Punishment for obstruction or non-cooperation in investigation, failure to submit report or obstruction in the supply of information.- (1) Any person who, under this Act –

(a) obstructs or declines to cooperate with any investigation officer for carrying out the investigation; or

(b) declines to supply information or submit a report being requested without any reasonable ground; shall be deemed to have committed an offence under this Act.

(2) Any person who is convicted under sub-section (1) shall be punished with imprisonment for a term not exceeding 1 (one) year or with a fine not exceeding taka 25 (twenty five) thousand or with both.

8. Punishment for providing false information.- (1) No person shall knowingly provide false information in any manner regarding the source of fund or self identity or the identity of an account holder or the beneficiary or nominee of an account. (2) Any person who violates the provision of sub-section (1) shall be punished with imprisonment for a term not exceeding 3 (three) years or a fine not exceeding taka 50 (fifty) thousand or with both.

9. Investigation and trial of an offence.- (1) Notwithstanding anything contained in any other law, the offences under this Act shall be considered as the scheduled offences under the Anti Corruption Commission Act, 2004 (Act No. V of 2004) and shall be investigated by the Anti Corruption Commission or any officer of the Commission empowered by it in this behalf or any officer of any other investigating agency authorized by the Anti Corruption Commission. (2) The offences under this Act shall be tried by a special judge appointed under section 3 of the Criminal Law Amendment Act, 1958 (Act No. XL of 1958). (3) For the purpose of the investigation and identification of property of an accused person, the Anti Corruption Commission may, besides this Act, also exercise the powers vested in it under the Anti Corruption Commission Act, 2004 (Act No. V of 2004) and an officer of any other investigating agency authorized by the Anti Corruption Commission may, besides this Act, also exercise the powers vested in it under any other law.

10. Extraordinary jurisdiction of the special judge.- (1) The special judge may impose such punishments as are specified for the offences under this Act, and where appropriate, may pass any other necessary order including orders for further investigation, freezing, attachment and confiscation of property. (2) If the special judge passes an order for further investigation of any case filed under this Act, he shall, in the said order, specify a time-limit which shall not exceed 6 (six) months directing the investigation officer to submit his investigation report.

11. Cognizancy, non-compoundability and non-bailability of offences.—Offences under this Act shall be cognizable, non-compoundable and non-bailable.

12. Inevitability of the approval of the Anti Corruption commissions- (1) Notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, no court shall take cognizance of any offence under this Act, except with the approval of the Anti Corruption Commission. (2) After concluding the investigation under this Act, the investigation officer shall take prior approval of the Anti-Corruption Commission before submitting his report and shall submit a copy of the approval before the court along with the report.

13. Provisions relating to bail.— Any person accused under this Act shall be released on bail, if—

- (a) the complainant is given an opportunity of being heard on the application for bail; and
- (b) the court is not satisfied that there are reasonable grounds to believe that the accused shall be found guilty of the charges brought against him; or
- (c) the accused is a woman, child or physically disabled person and the court is satisfied that justice may not be hindered by reason of releasing him on bail.

14. Orders to freeze or attach property.— (1) The court may, on the basis of a written application by the Anti Corruption Commission or any person or organization authorized by it, issue an order to freeze or attach the property, within or outside the country, involved in money laundering or any other offence. (2) At the time of making a written application before the court under sub-section (1) for an order to freeze or attach any property, the Anti Corruption Commission or any person or organization authorized by it shall mention the following information in the application, namely:-

- (a) full description of the property for which an order for freezing or attachment is sought;
- (b) grounds and primary evidence in support of the property for being attachable due to its involvement in money laundering or any other offence;
- (c) the apprehension that the property may be transferred or taken beyond possession before the disposal of the complaint, if an order is not passed by the court according to the application.

(3) If an order for freezing or attachment is passed under sub-section (1), the court shall, by notification in the official Gazette, publish the matter with details of the property for general information and at least in 2 (two) widely circulated national dailies [1(one) Bengali and 1(one) English] in the form of a notice. (4) In an order passed under this section to freeze or attach any property, the name of the accused, the names of his parents, the name of spouse, nationality, designation (if any), occupation, tax identification number (TIN), present and permanent addresses and any other identification of the accused shall, in so far as possible, be mentioned, but the enforcement of the provisions of this Act shall not be impeded by any trifling errors and omissions of these information. (5) Subject to the provisions of sub-section (6), if

the court passes an order for freezing or attachment of any property of a person under this section, the property may, unless the court directs otherwise, not be in any way transferred elsewhere and no transactions may be carried out with respect to the property nor may any encumbrances be attached to the property while the order is in force. (6) While an order for freezing with respect to any person's bank account is in force, all money receivable by that person may be deposited into the frozen bank account, unless otherwise mentioned in the order.

15. Return of frozen or attached property.– (1) If any court makes an order to freeze or attach any property under section 14 and any person or entity other than the accused person or entity has an interest in that property, the person or the entity may make an application before the court for the return of the property within 30 (thirty) days of the publication of the notice on the order to freeze or attach the property. (2) If any person or entity makes an application before the court under sub-section (1), the following information shall be mentioned in the application:-

- (a) the property is not involved directly or indirectly in money laundering or any predicate offence;
- (b) the applicant is not involved directly or indirectly in the alleged money laundering or any other predicate offence;
- (c) the applicant is not acting as a nominee of, or on behalf of, the accused person;
- (d) the accused person or entity has no proprietary right, interest or ownership with regard to the frozen or attached property; and
- (e) the applicant has a proprietary right, interest and ownership in the frozen or attached property.

(3) Notwithstanding anything contained in sub-section (5) of section 14, if the court receives any application for return of any property under this section, it shall give the applicant, the investigation agency and the accused person or entity an opportunity of being heard and at the end of the hearing, after reviewing the necessary documents, if the court is satisfied with the application of the applicant brought under sub-section (1) and finds that the Government has not presented a reasonable suspicion that the property is involved directly or indirectly in money laundering or a predicate offence, it shall set aside the order to freeze or attach the property, and pass an order for transfer of the property in favour of the applicant within the time specified in the order.

16. Appeal against the order to freeze or attach property.– (1) Any person or entity aggrieved by an order for freezing or attachment of any property, passed by a court under this Act, may prefer an appeal against such order before the High Court Division within 30 (thirty) days. (2) If an appeal is preferred under sub-section (1) the appellate court shall give the parties reasonable time for being heard, and at the end of hearing, may pass such order as it deems fit. (3) If any person or entity aggrieved by an order to freeze or attach any property passed by any court under section 14 prefers an appeal against such order, the said order shall have effect pending the appeal to be disposal of, unless the appellate court directs otherwise.

17. Confiscation of property.– (1) If any person or entity is convicted of the offence of money laundering under this Act, the court may pass an order for confiscation of any property, within or outside the country, involved directly or indirectly in money laundering or predicate offence in favour of the State. (2) Notwithstanding anything contained in sub-section (1), during an inquiry and investigation or prosecution under

this Act relating to an offence of money laundering, the respective court may, where necessary, pass an order for the confiscation of any property situated within or outside the country in favour of the State. (3) If any person convicted of the offence of money laundering under this Act absconds or dies after submitting the charge sheet, the court may pass an order for confiscation of that person's property which was involved in the money laundering or predicate offence in favour of the State.

Explanation.— A person shall be deemed to have absconded for the purposes of this section where the person, despite adequate measures being taken, fails to surrender before the court within 6 (six) months of issuance of the warrant of arrest, or it is not possible to arrest the person within the period.

(4) If any person or entity purchases any property applied for confiscation in good faith and for proper value before an order for confiscation of the property is passed by the court under the provisions of this section or before a case is filed or a complaint is lodged, and the person or the entity is able to satisfy the court that he or it was not aware of the matter that the said property was involved in money laundering, and purchased the property in good faith, then the court may, instead of ordering for confiscation of the property, order the convicted person or entity to deposit the proceeds of the sale of the property to the treasury of the State within the time specified by it. (5) If the court finds that the property involved directly or indirectly in money laundering or any predicate offence cannot be located or confiscated or has been dissipated for being used otherwise, the court may- (a) pass an order for confiscation of such property of an equivalent value of the accused as is not related with the offence; (b) impose a fine on the accused equivalent to the value of the unrecovered property. (6) If any property is confiscated under this section, the notice of the order of confiscation shall be sent by registered post to the last known address of the person or entity having control of the confiscated property and such notice, along with the schedule and full details of the property, shall be published in the official Gazette and at least 2 (two) widely circulated national dailies [1(one) Bengali and 1(one) English]. (7) If any courts pass an order for confiscation of any property under this section, the ownership of the property shall be vested in the State and the person or entity who is the owner or custodian of the property shall hand over the possession of the property to the State as early as possible. (8) If the proceeds of crime have been mingled with property acquired from legitimate sources, such property shall be liable to confiscation up to the assessed value of the mingled proceeds by the court or where the value of the proceeds of crime cannot be determined, the court may pass a confiscation order on the full value of the mingled money or property in favour of the State.

18. Return of confiscated property. —(1) If a court pass an order of confiscation of any property under section 17 and any person or entity other than the convicted person has any title, interest or right in the property, the person or the entity may make an application before the court for the return of the property within 30 (thirty) days of the publication of the notice of confiscation of the property in newspaper. (2) If any application is received under sub-section (1), the court shall give a reasonable time to the person who filed the case, the convicted person or entity and the applicant to be heard and after hearing, the court may pass necessary order considering the following matters, namely:-

- (a) whether the applicant or the confiscated property or any part thereof had any involvement in the commission of the offence;
- (b) whether the applicant has a valid right to acquire the confiscated property;
- (c) the duration of the commission of the offence and the duration of alleged ownership of the confiscated property by the applicant; and
- (d) any other information deemed to be relevant by the court.

19. Appeal against any order for confiscation.—(1) If any court pass an order for confiscation of any property under this Act, the party aggrieved by such an order may prefer an appeal against the order before the High Court Division within 30 (thirty) days. (2) If an appeal is preferred under sub-section (1), the appellate court shall give both the parties reasonable opportunity of being heard and may, on conclusion of such hearing, pass such orders as it deems fit.

20. Procedure for disposal of confiscated property.— (1) If any property is confiscated under this Act, the Government may, subject to the permission of the court, sell or, in any other way, dispose of such property other than the property which is required to be destroyed under any other law, by means of an open auction or by any other commercially profitable and lawful means. (2) The proceeds of the sale or disposal of the property in any other legal manner under sub-section (1) shall be deposited into the treasury of the State.

21. Appointment of a manager or caretaker for taking care of the frozen, attached or confiscated property.— If any property is frozen, attached or confiscated under this Act, the court may, upon an application of the investigation agency or any person authorized by it in this behalf, appoint any law enforcement agency as a manager or caretaker of the property to take control, manage, look after or, in any other manner, deal with the total property or any part thereof under such terms and conditions as the court may deem fit.

22. Appeal.— Notwithstanding anything contained in any other law for the time being in force, any party aggrieved by an order, judgment, decree or sentence passed by a court under this Act may prefer an appeal before the High Court Division within 30 (thirty) days from the date of such order, judgment, decree or sentence.

23. Powers and responsibilities of Bangladesh Bank in restraining and preventing the offence of money laundering.— (1) For the purposes of this Act, Bangladesh Bank shall have the following powers and responsibilities, namely:-

- (a) to analyze or review information related to cash transactions and suspicious transactions received from any reporting organization and to collect additional information relating thereto for the purpose of analyzing or reviewing from the reporting organizations and maintain data on the same and, as the case may be, provide with the said information to the relevant law enforcement agencies for taking necessary actions;
- (b) ask for any information or obtain a report from reporting organizations with regard to any transaction in which there are reasonable grounds to believe that the transaction involves in money laundering or a predicate offence;
- (c) issue an order to any reporting organization to suspend or freeze transactions of any account for a period not exceeding 30 (thirty) days if there are reasonable grounds to suspect that any money or property has been deposited into the account by committing any offence:

Provided that such order may be extended for additional period of a maximum of 6 (six) months by 30 (thirty) days, if it appears necessary to find out correct information relating to transactions of the account;

(d) issue, from time to time, any directions necessary for the prevention of money laundering to the reporting organizations;

(e) monitor whether the reporting organizations have properly submitted information and reports requested by Bangladesh Bank and whether they have duly complied with the directions issued by it, and where necessary, carry out on-site inspections of the reporting organizations to ascertain the same;

(f) arrange meetings and seminars including training for the officers and staff of any organization or institution, including the reporting organizations, considered necessary for the purpose of ensuring proper implementation of this Act by Bangladesh Bank;

(g) carry out any other functions necessary for the purposes of this Act.

(2) If any investigation agency makes a request to provide it with any information in any investigation relating to money laundering or suspicious transaction, then Bangladesh Bank shall provide with such information where there is no obligation for it under any existing law or for any other reason. (3) If any reporting organization fails to provide with the requested information timely under this section, Bangladesh Bank may impose a fine on such organization which may extend to a maximum of taka 5 (five) lacs at the rate of taka 10 (ten) thousand per day and if any organization is fined more than 3(three) times in 1(one) financial year, Bangladesh Bank may suspend the registration or licence of the organization or any of its branches, service centers, booths or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so as to the relevant authority may take appropriate measures against the organization.

(4) If any reporting organization provides with false information or statement requested under this section, Bangladesh Bank may impose a fine on such organization not less than taka 20 (twenty) thousand but not exceeding taka 5 (five) lacs and if any organization is fined more than 3(three) times in 1(one) financial year, Bangladesh Bank may suspend the registration or license of the organization or any of its branches, service centers, booths or agents for the purpose of closing its operation within Bangladesh or, as the case may be, shall inform the registration or licensing authority about the fact so as to the relevant authority may take appropriate measures against the said organization. (5) If any reporting organization fails to comply with any instruction given by Bangladesh Bank under this Act, Bangladesh Bank may impose a fine on such organization which may extend to a maximum of taka 5 (five) lacs at the rate of taka 10 (ten) thousand per day for each of such non compliance and if any organization is fined more than 3(three) times in 1(one) financial year, Bangladesh Bank may suspend the registration or license of the organization or any of its branches, service centers, booths or agents for the purpose of closing its operation within Bangladesh or, as the case may

be, shall inform the registration or licensing authority about the fact so as to the relevant authority may take appropriate measures against the said organization. (6) If any reporting organization fails to comply with any order for freezing or suspension of transaction issued by Bangladesh Bank under clause (c) of sub-section (1), Bangladesh Bank may impose a fine on such organization not less than the balance held on that account but not more than twice of the balance held at the time of issuing the order. (7) If any person or entity or reporting organization fails to pay any fine imposed by Bangladesh Bank under sections 23 and 25 of this Act, Bangladesh Bank may recover the fine from accounts maintained in the name of the relevant person, entity or reporting organization in any bank or financial institution or Bangladesh Bank, and in this regard if any amount of the fine remains unrealized, Bangladesh Bank may, if necessary, make an application before the court for recovery and the court may pass such order as it deems fit. (8) If any reporting organization is imposed fine under sub-sections (3), (4), (5) and (6), Bangladesh Bank may also impose a fine not less than taka 10 (ten) thousand but not exceeding taka 5 (five) lacs on the responsible owner, directors, officers and staff or persons employed on contractual basis of that reporting organization and, where necessary, may direct the relevant organization to take necessary administrative actions.

24. Establishment of the Bangladesh Financial Intelligence Unit (BFIU).—(1) In order to exercise the power and perform the duties vested in Bangladesh Bank under section 23 of this Act, there shall be a separate unit to be called the Bangladesh Financial Intelligence Unit (BFIU) within Bangladesh Bank. (2) For the purposes of this Act, the governmental, semi-governmental, autonomous organizations or any other relevant institutions or organizations shall, upon any request or spontaneously, provide the Bangladesh Financial Intelligence Unit with the information preserved or gathered by them.

(3) The Bangladesh Financial Intelligence Unit may, if necessary, spontaneously provide other law enforcement agencies with the information relating to money laundering and terrorist financing. (4) The Bangladesh Financial Intelligence Unit shall provide with information relating to money laundering or terrorist financing or any suspicious transactions to the Financial Intelligence Unit of another country on the basis of any contract or agreement entered into with that country under the provisions of this Act and may ask for any such information from any other country. (5) The Bangladesh Financial Intelligence Unit may also provide with such information to the Financial Intelligence Units of other countries spontaneously where there is no such contract or agreement under sub-section (4).

25. Responsibilities of the reporting organizations in prevention of money laundering.—(1) The reporting organizations shall have the following responsibilities in the prevention of money laundering, namely:-

(a) to maintain complete and correct information with regard to the identity of its customers during the operation of their accounts;

(b) if any account of a customer is closed, to preserve previous records of transactions of such account for at least 5(five) years from the date of such closure;

(c) to provide with the information maintained under clauses (a) and (b) to Bangladesh Bank from time to time, on its demand;

(d) if any doubtful transaction or attempt of such transaction as defined under clause (n) of section 2 is observed, to report the matter as “suspicious transaction report” to the Bangladesh Bank immediately on its own accord.

(2) If any reporting organization violates the provisions of sub-section (1), Bangladesh Bank may- (a) impose a fine of at least taka 50 (fifty) thousand but not exceeding taka 25 (twenty-five) lacs on the reporting organization; and (b) in addition to the fine mentioned in clause (a), cancel the license or the authorization for carrying out commercial activities of the said organization or any of its branches, service centers, booths or agents, or as the case may be, shall inform the registration or licensing authority about the fact so as to the relevant authority may take appropriate measures against the organization.

(3) Bangladesh Bank shall collect the sum of fine imposed under sub-section (2) in such manner as it may determine and the sum collected shall be deposited into treasury of the State.

26. Contract with foreign countries.– (1) For the purposes of this Act, the Government may enter into a contract with any foreign State under bilateral or multilateral agreements, conventions or any other means recognized by international law. (2) If the Government enters into any contract with any foreign State under this section, the Government may, for the purpose of prevention of money laundering:-

(a) ask for necessary information from the foreign State or organization; and

(b) provide with information asked for by the foreign State or organization if it is not a threat to national security.

(3) For the purposes of this Act, the Bangladesh Financial Intelligence Unit (BFIU) may sign any memorandum of understanding with any foreign financial intelligence unit or other organization and under the memorandum of understanding BFIU may -

(a) ask for necessary information from the foreign financial intelligence unit or organization; and

(b) provide information sought by the foreign financial intelligence unit or organization if it is not a threat to national security. (4) Any court may, upon the application of Attorney General's Office, pass such orders as it deems fit where, for the purpose of this Act, it is necessary to confiscate or return any property situated in Bangladesh in order to comply with an order made by a court of a foreign State under a contract; similarly the Attorney General's Office may make a request to a foreign State for the purpose of complying with an order passed by a court in Bangladesh for confiscation or return of property under a contract or memorandum of understanding. (5) Notwithstanding anything contained in any other law, any documents received from the appropriate authorities of any foreign State under the scope of mutual legal assistance, shall, for the purposes of this Act, be admissible as evidence before the relevant court.

27. Offences committed by an entity.— If any offence under this Act is committed by an entity, every proprietor, director, manager, secretary or any other officer, staff or representative of the said entity who is directly involved in the offence shall be deemed to be guilty of the offence, unless he is able to prove that the offence has been committed without his knowledge or he tried his best to prevent it.

Explanation.— In this section “director” includes any member of the partnership entity or any of the Board of Directors of the entity, by whatever name called.

28. Protection of actions taken in good faith.— No suit or prosecution or administrative measures or any other legal proceedings shall lie against the Government or any officer or staff of the Government or Bangladesh Bank or any officer or staff of Bangladesh Bank or the Anti-Corruption Commission or any officer or staff of the Commission or any reporting organization or its Board of Directors or any of its officers or staff for anything which is done in good faith under this Act or rules made thereunder for which any person is or likely to be affected.

29. Power to make rules.—

For the purposes of this Act, the Government may, by notification in the official Gazette, make rules.

30. Publication of an English Text of the Act.— (1) After the commencement of this Act, the Government shall, as soon as possible, by notification in the official Gazette, publish an Authentic English Text of this Act. (2) In case of any conflict between the Bangla Text and the English Text, the Bangla Text shall prevail.

31. Repeal and savings.—(1) The Money Laundering Prevention Act, 2009 (Act No. VIII of 2009) and the Money Laundering Prevention Ordinance, 2012 (Ordinance No. II of 2012), hereinafter referred to as the Act and Ordinance, are hereby repealed. (2) Notwithstanding such repeal, any action taken or any case filed or any proceeding taken under the Act and Ordinance which are pending shall be disposed of in such a manner as if it had been filed and taken under this Act. (3) Notwithstanding such repeal, if any offence committed or remains under investigation or trial under the Foreign Exchange Regulation Act, 1947 (Act No. VII of 1947) and the Act and Ordinance, such offences shall be disposed of in such a manner as if it had been filed and taken under this Act.

Md. Mahfuzur Rahman
Acting Secretary

Appendix Two

Anti Terrorism Act 2009 (Act XVI of 2009)

[24 February, 2009]

An Act to prevent and effectively punish certain terrorist activities and to make provisions connected therewith

WHEREAS it is expedient and necessary to prevent certain terrorist activities and to make provisions connected therewith as well as punishing those activities therewith; It is hereby enacted as follows:-

CHAPTER ONE

Preliminary Short Title, Extent and Commencement

1. (1) This Act may be called the Anti Terrorism Act 2009.
- (2) It shall extent to the whole of Bangladesh.
- (3) It shall come into effect from 11th June 2008.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context, -

- (1) "Offence" means any offence punishable under this Act;
- (2) "Firearms" means any kind of pistol, revolver, rifle, gun or canon, and includes any other kind of firearms;
- (3) "Court" means the Court of Session Judge or, in applicable cases, the Court of Additional Judge;
- (4) "Imprisonment" means imprisonment of any description as stated in section 53 of the Penal Code;
- (5) "Code of Criminal Procedure" or "Procedure" means the Code of Criminal Procedure, 1898 (Act V of 1898)
- (6) "Schedule" means the Schedule of this Act;
- (7) "Penal Code" means the Penal Code, 1860 (Act XLV of 1860);
- (8) "Ignitable substance" means any material which has normally the highest tendency of setting out or increasing or spreading fire, for example-octane, petrol, diesel, compressed natural gas(CNG), gun powder, and includes any other ignitable substance;
- (9) "Bangladesh Bank" means Bangladesh Bank constituted under Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972);
- (10) "Bank" means any bank constituted under the Bank Companies Act, 1991 (Act XIV of 1991) and also includes any other financial or commercial organization having the authority under any other law to receive loan, share out or exchange money;
- (11) "Judge" means Session Judge, Additional Session Judge or, where applicable, the Judge of the Anti Terrorism Special Tribunal;
- (12) "Special Tribunal" means any Tribunal constituted under section 28 of this Ordinance for the purpose of countering terrorism;
- (13) "Explosive Substance" means-(a) gunpowder, nitroglycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect; and

(b) any materials for making any explosive substance; also any apparatus, machine implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement and includes fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions;

(14) “Property” means property of any description, material or immaterial, movable or immovable, tangible or intangible and any profit arising out there from; and also includes any money or negotiable instrument;(15) “Evidence Act” means the Evidence Act 1872 (Act I of 1872)

3. Applicability of other Words and Expressions:-

(1) The words or expressions which are used in this Act but have not been defined in this Act shall be taken in the sense as defined in the Code of Criminal Procedure or where applicable, in the Penal Code.(2) The general principles of the crimes and criminal responsibility as enunciated in the Penal Code shall, to the extent possible, be applicable to the offences under this Act unless they are contradictory to the other provisions of this Act.

4. Supremacy of the Law: --

The provisions of this Act shall have effect notwithstanding anything to the contrary contained in the Code of Criminal Procedure or any other law for the time being in force.

5. Extra-territorial Application

(1) If any person commits any offence against any Bangladeshi national or property outside Bangladesh, which if committed in Bangladesh would have been punishable under this Act, shall be deemed to have committed the offence in Bangladesh and the provisions of this Act shall be applicable to that person and the offence.(2) If any person commits any offence inside Bangladesh from outside the territory of Bangladesh, it shall be deemed that total process of the commission of offence has been performed in the territory of Bangladesh and the provisions of this Act shall be applicable to that person and the offence.

(3)If any person commits any offence outside Bangladesh from the territory of Bangladesh, it shall be deemed that total process of the commission of offence has been performed in the territory of Bangladesh and the provisions of this Act shall be applicable to that person and the offence

CHAPTER TWO Offence and Punishment

6. Terrorist Activities

(1) If any person by creating horror amongst the public or segment of the public to jeopardize the territorial integrity, solidarity, security or sovereignty of Bangladesh, for the purpose of compelling the government or any other person to do or not to do an act— (a) causes death, inflicts grievous hurt, confines or abducts any person or causes damage to any property of a person; or (b) uses or keeps any explosive, ignitable substance, firearms or any other chemical substance with a view to effect the purposes enumerated in clause (a);shall commit the offence of “terrorist activities.”(2) Any person committing terrorist activities shall be sentenced with death or convicted with rigorous imprisonment of not more than 20 years but not less than 3 years and shall also be liable to fines.

7. Offences for supply of money to terrorist activities

(1) If any person supplies or incites to supply money, service or any other property to other person and intends to use it for any terrorist activities or if there is reasonable cause to believe that those would be or might be used for terrorist activities, he would commit the offence for supply of money to terrorist activities.(2) If any person receives money, service or any other property and intends to use it for any terrorist activities or if there is reasonable cause to believe that those would be or might be used for terrorist activities, he would commit the offence for supply of money to terrorist activities.(3) If any person manages money, service or any other property to other person and intends to use it for any terrorist activities or if there is reasonable cause to believe that those would be or might be used for terrorist activities, he would commit the offence for supply of money to terrorist activities.(4) Any person found guilty of offences under sub-clause (1) to (3), shall be convicted of not more than twenty years and not less than three years imprisonment of any description, and in excess to that may also be liable to fine.

8. Membership of prohibited organizations

If any person becomes or claims to be a member of any prohibited organization, he would commit offence and committing such offence and would be punished with not more than six months imprisonment or fine or with both.

9. Supporting of prohibited organization

(1)If any person requests or urges any other person to support any prohibited organization under section 18,or arranges, administers or aids to administer or gives speeches for the purpose of supporting any prohibited organization or boosting up or encouraging its activities, he would commit offence.(2) If any person addresses any meeting or circulates any information for begging support in favour of any prohibited organization or for activating its activities, through radio, television or any other print or electronic media, he would commit offence.(3) Any person found guilty of offences under sub-clause (1) or (2), shall be convicted of not more than seven years and not less than two years imprisonment of any description, and in excess to that may also be liable to fine.

10. Punishment for criminal conspiracy

If any person involves in criminal conspiracy to commit any offence under this Act, he shall be punished for such a term of any description which is two-thirds of the maximum punishment provided for that offence or with fine or both and if the fixed punishment is death sentence, the punishment shall be for life imprisonment or not more than fourteen years but shall not be less than 5 years.

11. Punishment for attempt to commit offence

If any person attempts to commit any offence under this Act, he shall be punished for such a term of any description which is two-thirds of the maximum punishment provided for that offence or with fine or both and if the fixed punishment is death sentence, the punishment for the offence shall be for life imprisonment or not more than fourteen years but shall not be less than 5 years.

12. Punishment for abetment to offence

Whoever abets to any offence punishable under this Act shall be punished with the conviction fixed for that offence.

13. Instigation to terrorist activities

If any person through his voluntary activities or participation prepares or distributes any document or by broadcasting any information through print or electronic media or aids to any person or organization by providing any apparatus, service or technology or training with knowledge that such document, apparatus, service or technology or training would be used to perpetrate any offence under this Act or such person or organization would use those to perpetrate like offences, it shall be taken that such person has instigated the terrorist activities and for such type of offence he shall be punished for such a term of any description which is two-thirds of the maximum punishment provided for that offence or with fine or both and if the specified punishment is death sentence, the punishment for the offence shall be for life imprisonment or not more than fourteen years but shall not be less than 5 years.

14. Sheltering offenders

(1) If any person irrespective of having knowledge that a person has committed offence under this Act or irrespective of having reasonable cause to believe that the impugned person is an offender, shelters or hides any person, he shall be-(a) convicted of five years, if the punishment for the offence is a death sentence, and in excess to it shall also be liable with fine.(b) convicted of three years, if the offence is punishable with life imprisonment or for any other term and in excess to that shall also be liable with fine.

(2). If the offence of sheltering or hiding under sub-clause (1) is accorded by husband, wife, son, daughter, father or mother of the offender, the provisions of this section shall not be applicable.

CHAPTER THREE

Powers of Bangladesh Bank

15. The Powers of Bangladesh Bank

(1) Bangladesh Bank shall have the power to prevent and identify any transaction through banking channel designed to committing any offence under this Act and for this purpose shall have the following powers and authority-(a)to ask for any statement relating to any doubtful transaction and if not permitted by law to disclose, to keep it secret;(b)to collect and preserve all statistics and record; (c) to create and preserve data-base relating to any doubtful transaction; (d) to analyze statement relating to doubtful transaction (e) to give written order to the concerned bank to close transaction for thirty days, if there is reasonable cause to doubt that a transaction is associated with terrorist activities and to extend the time for further thirty days;(f)to scrutinize and supervise the activities of the bank/s; (g) to give direction to the banks for taking preventive measures to debar supply of money to terrorist activities; (h)inspect the banks to find out the transaction associated with doubtful transaction for terrorist activities; and(i)to train up the officers and staffs to identify and prevent the doubtful transaction associated with supply of money to terrorist activities.(2) Bangladesh Bank, after identifying any bank or its recipient of doubtful transaction

associated with supply of money to terrorist activities, shall instantly inform the proper law enforcing authority and shall provide all necessary cooperation to that law enforcing agency in investigation and inquiry task. (3) No law enforcing authority shall have the access to any document or record of any bank, save in accordance with permission of Bangladesh Bank or Chief Executive Officer of the concerned bank.

16. Duty of the Bank

(1) Every bank, for the purpose of preventing and identifying any offence under this Act through any banking channel, shall take necessary measures with due weight and responsibility.

(2) Board of Directors of every bank shall endorse and execute directories relating to the responsibilities of the officers of the bank, shall ensure the compliance of the directions, whichever is applicable, rendered by the Bangladesh Bank.

(3) If any bank fails to comply with the direction from the Bangladesh Bank under section 15, it shall be obliged to pay not more than ten lakh taka determined and directed by the Bangladesh Bank.

CHAPTER FOUR Terrorist Organization

17. Organization involved with terrorist activities

For the purpose of furthering the objectives of this Act, any organization shall be held to be involved in terrorist activities, if it-(a)operates terrorist activities or participates in it; (b)take preparation for terrorist activities; (c)abets or incites terrorist activities; (d)supports and cooperates organizations involved in terrorist activities;(e)otherwise involves in terrorist activities.

18. Prohibiting organization

For the purpose of this Act the Government shall have the power to prohibit by order or incorporating in schedule, any organization on reasonable basis of involvement in terrorist activities.

19. Review

(1) Organization aggrieved by the order of the government under section 18 shall, within 30 days of the giving the order, apply to government in writing, presenting arguments, for review and the government providing with an opportunity of being heard, settle the review application within ninety days from the date of receiving such application.

(2) If the review application is not granted under sub-clause (1), the aggrieved organization shall have the right to make an appeal to the High Court Division within thirty days of not-granting of the order.(3) The government through gazette notification shall constitute a three member Review Committee to dispose of the review applications under sub-clause (1).

20. Actions against prohibited organization

(1) If any organization is declared prohibited, the government, in addition to taking steps under this Act, is empowered to take the following measures:(a)would close its office, if any; (b)would freeze its bank account and confiscate other transaction;

(c) would abandon all types of prospectus, poster, banner, or other printed, electronic and digital materials; and (d) shall prohibit the publication of any press release, printing or publication, press conference or giving speech before public; (2) The prohibited organization shall submit the accounts of its earnings and expenses and disclose all sources of income to proper authority appointed by the government. (3) If it appears that fund and assets of the prohibited organization have been earned unlawfully or have been used to commit any offence under this Act, such fund and assets shall be forfeited in favour of the state.

CHAPTER FIVE

Investigation of offences

21. Special provision for examining the witness by the police

(1) If any police officer while investigation of any offence under this Act, thinks it fit that a person acquainted with the incident needs to be interrogated and if the police officer knows or has reason to believe that person is capable of providing the minutes of the incident in writing, then that police officer, with the consent of that person, shall have the power to take the narratives of the incidents from that person in writing. (2) That person shall reduce his statement or narratives of the incident into writing in his own hand by pen and sign.

22. Special provision relating to recording of statement of the witness by the Magistrate

If any Metropolitan Magistrate, Magistrate of the first class or Magistrate of the second class specially assigned for this purpose knows or has reasonable cause to believe that person is capable enough to provide the minutes of the incident in writing, he shall have the power to take the narratives of the incidents from that person in writing.

23. Special provision relating to record of confessional statement of the accused

While recording of any confessional statement of the accused is going on by any Metropolitan Magistrate, Magistrate of the first class or Magistrate of the second class specially assigned for this purpose, if the accused is capable and desirous to provide the minutes of the incident in writing, he may allow the accused to give his confessional statement in his own writing by pen.

24. Time frame of investigation

(1) Any police officer shall complete the investigation of any case under this Act within thirty days from the date of receiving information or record under section 154 of the procedure. (2) If the police officer fails to complete the investigation by thirty days as stated under sub-clause (1), he shall extend the time for a further 15 days with reasons recorded in the case diary. (3) If the police officer fails to complete the investigation within time as stated under sub-clause (2), he shall extend the time further which shall not exceed 30 days with the written approval of the Superintendent of Police of the concerned district or in applicable cases, of the Deputy Police Commissioner of the metropolitan area. (4) If the police officer fails to complete the investigation within time as stated under sub-clause (3), he shall forthwith communicate about the incidents with reasons recorded therein to the Superintendent of Police of the concerned district or in applicable cases, to the Deputy Police Commissioner of the metropolitan area, and if the reasons are not justified he shall be subject to departmental penal action.

25. Time extension of investigation in certain cases

(1) Any failure on the part of the police officer to complete investigation within the extended time as sated under section 24 (3) because of non-identification of the offender named in the First Information Report (FIR) and non-capability of identifying the offender, would not debar him in submitting police report or new police report or additional police report any time after the elapse of the extended time.

2. If any police officer for the purpose of obtaining any testimony or report fails to complete investigation within the extended time as sated under section 24 (3) because of the reasons not within his control and without which no effective report can be made, such as, medical report, forensic report, thumb impression, chemical report or expert opinion, such failure would not debar him in submitting police report any time after the elapse of the extended time.

26. Remand

(1) In any case when a person is arrested and detained for the purpose of conducting investigation, the investigating officer can apply to magistrate of competent jurisdiction for remanding the person to police custody.(2) The magistrate shall have the power after considering the application under sub-section (1) to grant remand of the accused and the term of such remand shall not extend ten days in its totality or continuity; provided that If the investigating officer can satisfactorily prove before the magistrate that if granted remand for an extended period, additional evidence may be obtained, the magistrate shall have the power to extend the period of such remand not more than five days.

CHAPTER SIX
Trial by Session Judge

27. Provisions relating to trial by Session Judge or Additional Judge

(1) Notwithstanding anything contained in the Criminal Procedure Code or any other law for the time being in force, unless Special Tribunal is constituted for the purpose, the offences under this Act shall be tried by the Session Judge or in the event of transfer of a case by the Session Judge to the Additional Session Judge, by the Additional Session Judge.(2) The Session Judge or the Additional Session Judge while trying the offences under this Act shall follow the procedure applicable for the session courts as envisaged in chapter 23 of the Code of Criminal Procedure.(3) For the purpose of this Chapter, offences under this Act shall be deemed to be triable by the Session Courts, and the complaints shall have to be lodged to the Session Judge under whose territorial jurisdiction the offence or part of the offence have been committed.

CHAPTER SEVEN
Trial by Special Tribunal

28. Formation of Special Tribunal for Anti-terrorism

(1) The Government, through Government Notification, shall constitute one or more Anti-terrorism Special Tribunal for the purpose of speedy and effective disposal of cases under this Act.

(2) The Special Tribunal so constituted under Sub-section (1), shall be composed of a Session Judge or Additional Session Judge appointed by the Government in consultation with the Supreme Court; and the Judge so appointed shall be designated

as ‘Judge, Anti-terrorism Special Tribunal’. (3) Tribunal constituted under this Section may be attributed the whole territorial area of Bangladesh or one or more territorial area of session division; and the tribunal shall try only those offences lodged or transferred to it. (4) The jurisdiction of a Session Judge or Additional Session Judge to try the offences under this Act shall not be affected by the conferment of territorial jurisdiction of the whole of Bangladesh or one or more territorial area of session division to a Special Tribunal, and the cases under this Act pending in a session court, unless otherwise ordered by government notification, shall not be transferred to the Special Tribunal having special territorial jurisdiction. (5) Any Special Tribunal, unless otherwise decides, shall not be bound to retake the testimony of any witness already taken or arrange hearing again or to restart proceedings under sub-section (4) but shall have the power to work on the testimony already recorded or presented and to continue the case from the stage as it was. (6) The Tribunal shall sit and administer its functions in the place and at the time as the Government fixes by Order.

29. The procedure of the Special Tribunal

(1) The Special Tribunal shall not take cognizance of any offence for the purpose of trial except in pursuance of a written report by a police officer not below the rank of Sub-Inspector. (2) The Special Tribunal while trying the offences under this Act shall follow the procedure laid down in chapter 23 of the Code of Criminal Procedure unless it is inconsistent with the special provisions of this Ordinance. (3) No Special Tribunal, unless required for natural justice and save reasons recorded in writing, shall postpone the proceedings of a case. (4) Where the Special Tribunal has reasons to believe that, the accused is absconding or has hidden himself and as such it is not possible to produce him for trial after arrest and there is no scope of arresting him immediately, in that case the Tribunal, by Order, shall have the power to direct the accused through at least two Bangla Daily Newspaper to surrender within time stipulated in the order the failure of which would entail trial in absentia.

(5) If the accused absconds or fails to be present, after his presence before the Tribunal or after bail being granted, the procedure stated in sub-section (4) shall not be applicable, and the Tribunal with reasons recorded in writing shall proceed with the trial in absentia. (6) Any Special Tribunal, on the basis of any application made to it or in its own motion, shall have the power to direct any police officer to reinvestigate the case and to report within the stipulated time determined by it.

30. Application of the Procedure in the Proceedings of the Tribunal

(1) The provisions of the Code of the Criminal Procedure, to the extent possible, unless it becomes repugnant with the provisions of this Act, shall be applicable in the proceedings of the Special Tribunal and such Tribunal shall have the powers of a Session Court having original jurisdiction. (2) The person appearing before the Special Tribunal on behalf of the government shall be deemed to be the public prosecutor.

31. Appeal and Confirmation of Death Sentence

(1) Appeal shall lie to the High Court Division against any order, judgment or Conviction of the Special Tribunal within 30 days of rendering its decision. (2) If any Tribunal awards a death sentence under this Act, the death Reference should be sent to the High Court Division for confirmation, and until such confirmation is given, the death sentence cannot be executed.

32. Provisions for bail

The Magistrate or the Judge shall not grant bail to the person accused of any offense punishable under this Act, unless-(a) the state party is given an opportunity of being heard; and (b) the judge is satisfied that there is reasonable cause to believe that the accused may not be guilty of offences alleged in the trial and he reduces the reasons of such satisfaction in writing.

33. The time framework of disposal of cases by the Special Tribunal

(1) The Judge of the Special Tribunal shall complete the trial within six months from the date of framing of charges.(2) If the Judge fails to complete the trial within the time fixed under sub-section (1),he may extend the time with reasons recorded in writing for not more than three months

(3) If the Judge fails to complete the trial within the time mentioned under sub-section(1), he may again extend the time with reasons recorded in writing for not more than three months keeping the High Court Division and the government informed about such extension.

CHAPTER EIGHT**Assets accumulated from terrorist activities****34. The possession of assets earned from terrorist activities**

(1) No person can enjoy or possess the assets earned from terrorist activities.(2) Assets earned through terrorist activities under the possession of any terrorist person any whether accused or convicted under this Act or not, shall be liable to forfeiture in favour of the government. Explanation: Assets earned through terrorist activities means money, property or assets gained by resorting to offences under this Act.

35. Forfeiture of assets earned through terrorist activities

If a judge is satisfied to the effect that any property was confiscated or seized because of being earned through terrorist activities, the property of the person from whose custody such property was confiscated or seized shall be liable to forfeited.

36. Issuance of show cause notice before forfeiting any asset earned through terrorist activities

(1) No Order of forfeiture of the assets earned through terrorist activities shall be given unless the person in whose control or possession the asset is situated, is issued a written notice describing the reasons of forfeiture and provided with an opportunity of giving reply in written and hearing within a reasonable time.(2) The Order of forfeiture shall not be given, if such person can establish that he did not know that the asset was earned through terrorist activities and he had purchased it in exchange of proper value.

37. Appeal

(1) Any aggrieved person may prefer an appeal to the High Court Division against the forfeiture order under section 35(1) within one month of receiving the Order.

(2) If any Order under section 35 is altered or annulled by the High Court division or if any case is filed in violation with the provisions of this Ordinance, the forfeited property of the person against whom the Order under section 35 was made, shall be returned to him after his release and in case if it becomes impossible to return the

property to that person, it shall be deemed that the forfeited property was sold out to the government and the person should be repaid interest from the date of forfeiture after proper account and the reasonable value of the property after its fair determination.

CHAPTER NINE

Mutual Legal Assistance

38. Mutual Legal Assistance

- (1) When an offence is committed in such a manner or is abetted, attempted, conspired, financed in its commission in such a way that the territory of a foreign country is associated with it, or running of terrorist activities or abetment, attempt, conspiracy or finance to its running, are committed from the territory of a foreign sovereign country or from the territory of Bangladesh to the territory of another sovereign country, then at the request of such foreign country the government of Bangladesh, if satisfied, subject to the provisions of this section, shall extend legal assistance to that foreign country in all necessary matters relating to criminal investigation, trial and extradition.
- (2) The terms and conditions of the legal assistance between the requesting and requested state shall be determined by agreement or exchange of notes reached through mutual negotiation.
- (3) No citizen of Bangladesh committing offence under this Ordinance shall be liable to be extradited to any foreign country.
- (4) For the purpose of mutual legal assistance under this section, a citizen of Bangladesh, subject to his consent, can be handed over to other country to assist in criminal case or investigation as a witness.
- (5) If there is strong reasons to believe on the part of the government that mutual legal assistance has been sought to try or punish a person simply for his caste, religion, nationality or political opinion, then as a requested state Bangladesh preserves the authority to refuse the request of extradition or mutual legal assistance in such cases.

CHAPTER TEN

General Provisions

39. Cognizance and Non-bailability

- (1) All offences under this Act shall be cognizable.
- (2) All offences under this Act are non-bailable.

40. Prior approval of investigation and trial

- (1) No police officer can investigate under this Act without the prior approval of the District Magistrate.
- (2) No Court shall take cognizance of any offence under this Act save in accordance with prior sanction of the government.

41. Transfer of cases from or to Special Tribunal

The Government, before the conclusion of obtaining testimony, at any stage of the trial, on reasonable cause, may transfer a case or cases relating to offences under this Act, from a Session Court to Special Tribunal or from a Tribunal to Session Court.

42. Power to amend Schedule

The Government, through Government Gazette Notification, may amend the schedule of the Act.

43. Power to make rules

The Government, through Government Gazette Notification, may frame rules, for the purpose of this Act.

44. Original and English text

The original text of this Act shall be in Bangla and there shall be an authentic text of unauthorized translation in English; provided that in the event of conflict between the Bangla and the English text, the Bangla text shall prevail.

45. Repeal & Saving there of

- (1) The Anti Terrorism Ordinance 2008 (Ordinance no.28of 2008) is here repealed.
- (2) Notwithstanding the repeal, any act taken or done under the repeal ordinance shall be considered to have done under this act.

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